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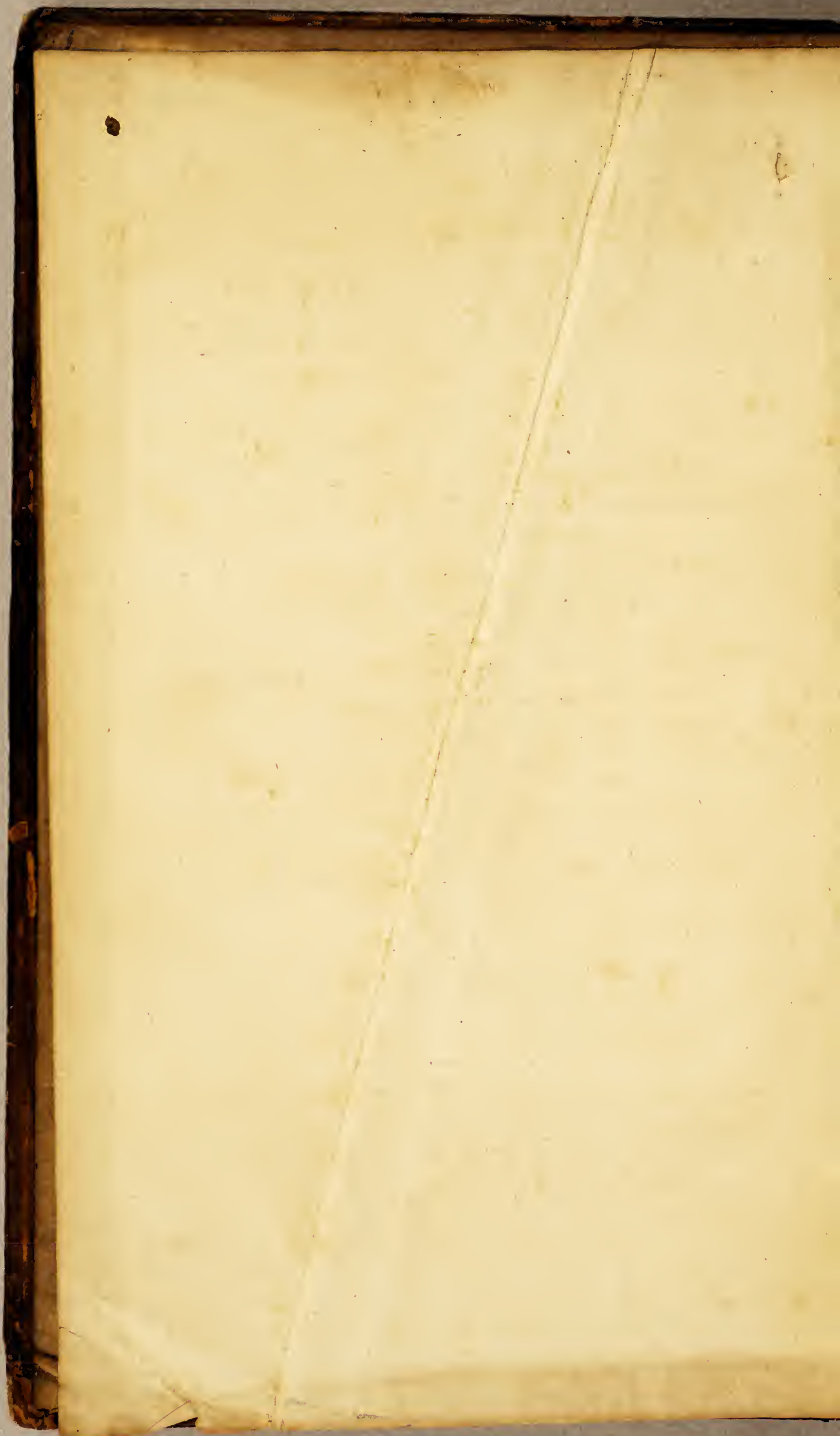


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In T W O V O L U M E S .

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M O N E Y.

Stat. *de Moneta*, 20 Ed. I. Sect. 1.

1. **I**T shall be cried through the realm, that no man, upon grievous forfeiture, dispense or receive money of other coin than of this king of England, of Ireland, and of Scotland.
2. Sect. 2. That none shall bring money into this country, but for his expences, neither arrive in England, but at common ports; and he shall shew his money to him that shall be assigned by the king, without concealment, upon pain of forfeiture of his body, and that which he hath.
3. Sect. 3. That upon the same forfeiture no man shall send money in bales, or other manner whereof suspicion may be of concealment; and if there be any such found, he which found the same shall have four pence of the pound, and the rest to be to the king.
4. Sect. 4. That if any find money of other coin, he shall pierce the same, and none shall gainsay upon pain of grievous forfeiture; and he which findeth the same false, shall break the same; the pierced money shall be given to him who oweth it, and the false money broken without restoring; and the body of him, in whose hands false or clipped money appeareth, shall be taken until he find surety if he be a suspicious man.
5. Sect. 5. He which ought to receive or pay money, shall receive and pay the same by the weight of five shillings by the tumbrel, delivered by the warden of the Exchange, marked with the king's

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mark;

mark ; and it shall be lawful for any man to pierce money which shall not weigh the tumbrel, and the money of other coin.

6. Sect. 6. The weights shall be as well marked by the warden of the Exchange, as the tumbrel.

7. Sect. 7. The viewer and the warden of money shall weigh the same, and if he find of new money, that the pound weigheth not twenty shillings ; and if he see money which is much used, if in the pound it want but six pence, it shall be delivered to him who brought the same ; and if it want more, it shall be done as of the rest.

Quere, if in force.

8. *Stat de falsa moneta.* 27 Edw. I. stat. 3. None shall bring pollards* and crockards, &c. into the realm, on forfeiture of life and goods ; so always that all people may safely bring to the Exchange all money of gold or silver, of whatsoever foreign coin. And strict guard shall be kept upon the coasts, and at the ports by lawful pirates, who shall arrest those that bring bad money, and send them to whom the king shall appoint. And the commonalty of every port shall elect two good men of the same port, for whom they will answer, who, with the bailiffs of the ports, shall arrest and search all that arrive, and shall send the bodies of such as bring false money to the chief prison of the county, and the wardens shall send the money to the king's great exchange, and answer for their other goods at the Exchequer. And all that bring sterlings into the realm shall put them under the seals of the wardens of the ports, who shall send them to the next essayers ; and if they be found false, the bodies of those that bring them shall be in the king's will. And none shall

* Pollards, base coin heretofore current in this kingdom, which by the above act are prohibited : Pollards, crockards, staldings, eagles, leonines, &c. were ancient coins of money in England.
2 Inst. 577.

sell or send out of the realm wool, leather, skins, lead, or tin, but for good sterling, or for silver plate, marked and essayed at the king's great exchange, or in exchange of good and lawful merchandize; and if any do otherwise, and be thereof attaint by the said wardens, or other of the king's ministers, the things so sold, &c. shall be forfeited. And no silver coin or plate shall be carried out of the realm without the king's special leave, under the pain aforesaid. And the wardens shall swear before the sheriffs, or before their chief wardens, where they are not answerable to the sheriffs, that they shall, without negligence, do what belongs to their office. And if they release any for gift or for favour, or otherwise, and be thereof attaint, they shall be in forfeiture of life and of all that they have. And all who bring money out of the dominion of the king of France shall carry it to the table at Dover, and receive current money of this realm; and if they be found with it elsewhere, the money shall be forfeited.

9. Stat. 9 Edw. III. stat. 2. cap. 1. No man shall carry any sterling out of the realm, nor silver in plate, nor vessel of gold nor silver, upon pain of forfeiture of the money, plate, or vessel, without licence.

10. Stat. 9 Edw. III. stat. 2. cap. 2. No false money shall be brought into the realm, upon forfeiture of such money; so that all people may safely bring to the Exchequer bullion, silver in plate, vessel of silver, and money of silver.

11. Stat. 9 Edw. III. stat. 2. cap. 3. No sterling halfpenny nor farthing shall be molten to make vessel or any other thing, upon the forfeiture of the money so molten; and the goldsmith who hath molten such money shall be committed to prison till he hath yielded the one half of that he hath molten.

12. Stat. 17 Edw. III. sect. 1. The sterling money shall not be carried out of the realm.

13. Sect. 2. Men shall be assigned in the ports and elsewhere, to see that no silver be carried out of the realm, except that great men, when they go out, may have silver vessels to serve their houses: and none shall bring false money into the realm, on pain of forfeiture of life and member: and exchange shall be made with them that pass the sea, of gold for their good sterling to the value.

14. Sect. 3. The searchers shall have the third part of all the false money that they find, and the third of the good money that they find passing out of the realm; and if they be negligent, their lands and goods shall be seized, and their bodies imprisoned untill they have made fine: and in case they be assenting in the bringing in false money, or wittingly shall suffer silver to be transported out of the realm, they shall have judgment of life and member.
See 3 Inst. 93.

15. Stat. 25 Edw. III. stat. 5. cap. 12. It shall be lawful for every man to exchange gold for silver, or silver for gold; so that no man hold a common exchange, nor take profit for making such exchange, upon pain of forfeiture of the money exchanged, except the king's exchangers.

16. Stat. 25 Edw. III. stat. 5. cap. 13. The money of gold and silver shall not be impaired in weight, nor in allay, but put in the ancient state, as in the sterling.

17. Stat. 25 Edw. III. stat. 5. cap. 20. The moneyors, and other wardens and ministers of the money, shall receive plate of gold and silver by weight, and deliver the money when made by weight.

18. Stat. 27 Edw. III. stat. 2. cap. 14. sect. 1. Merchants may safely bring plate of silver and billets of gold, and all other gold, and money of gold and silver to the king's bullion and exchanges at the staples and elsewhere; and if any will take good money of gold and silver of other coin of the king's in payment, he shall take the same without impeachment, so that none be compelled.

19. Sect.

19. Sect. 2. No money shall have common course within the realm but the king's coin ; and none shall carry out of the realm the old sterling, nor other money but the new money, except merchants, strangers that bring money and employ it within the realm, and who may carry into their country all money not employed, so that good search be thereof made in the ports ; and all money that every merchant stranger shall bring, shall be put in writing by the searchers.

20. Sect. 3. None by colour of such search shall disturb any merchant stranger unduly ; and all the false money that may be found in deceit of good money shall be forfeited.

21. Stat. 5 Ric. II. *cap.* 2. No people, upon pain of as much as they may forfeit, shall carry out of the realm any gold or silver in money, bullion, plate or vessel, but the wages of the king's fortresses beyond the sea, and except prelates, lords, and others of the realm, to whom it behoveth to make payments beyond the sea, that of the same payments only they make exchanges in England by merchants to pass beyond the sea, and leave had of the king, as well for the exchangers, as for the persons which ought to make the payments. And the merchants that shall make exchanges shall be sworn, that they shall not send beyond sea any gold or silver ; and if any person be attainted that he hath sent beyond sea any gold or silver against this restraint, he shall forfeit to the king ; and the king defendeth the passage of all people, upon pain of forfeiting all the goods, except lords and other great men, the notable merchants, and the king's soldiers ; and every person who shall pass out of the realm without licence (which licence shall not be made but in the ports underwritten, *viz.* London, Sandwich, Dover, Southampton, Plymouth, Dartmouth, Bristol, Yarmouth, St. Botolph, Kingston upon Hull, Newcastle upon Tyne, and the other ports towards Ireland, and the

isles pertaining to this realm) shall forfeit to the king as much as he has in goods, and the master of the ship shall forfeit the vessel to the king. And if any searchers or wardens of the ports suffer wittingly to be done to the contrary, touching money and passages of people, to be convicted, he shall forfeit to the king his office and all his goods, and his body shall be committed to prison for a year; and whosoever proveth any thing done against these articles, shall have half the forfeiture.

This act concerning the restraint of passage is repealed by 4 Jac. I. cap. 1. sect. 22.

22. Stat. 14 Ric. II. cap. 2. For every exchange made by merchants to the court of Rome, or elsewhere, the merchants shall be bound in chancery to buy, within three months, merchandizes of the staple to the value of the sum exchanged, upon pain of forfeiture of the same.

Quere, If in force.

23. Stat. 17 Ric. II. cap. 1. No gold nor silver of lands beyond the sea shall run in payment, but shall be brought to the bullion, to be molten in the coin of England, upon pain of forfeiture of the same, and of imprisonment, fine, and ransom.

24. Stat. 2 Hen. IV. cap. 5. If any searcher find any go'd or silver in the keeping of any that is passing out of the realm without the king's licence, all that gold or silver shall be forfeited to the king, saving his reasonable expences, which he shall be bound to discover presently, after he is warned by the searcher, or else all the money concealed shall be forfeit; provided, that merchants strangers that sell their merchandize within the realm, and the one half of the money received do employ upon other merchandizes of the realm, may freely carry out the other half by the king's licence.

25. Stat. 11 Hen. IV. cap. 8. The chancellor shall, after fifteen days, send the estreats of writs of exchange into the Exchequer; and the treasurer and
barons

barons shall have power to examine the customers, and to punish those whom they find guilty, contrary to the stat. 14 Ric. II. *cap.* 2.

26. By stat. 17 Edw. IV. *cap.* 1. It is enacted, that no person carry out of the realm coin, plate, vessel, bullion, or jewels of gold or silver, without the king's licence, on pain of felony, and was, by 7 Edw. VI. *cap.* 6, continued for twenty years, and is now expired.

Query, If the force of some of the foregoing statutes under this title be not superseded by making a subsequent act of like effect, temporary? And Query, If some of them are not obsolete, as being laws of the staple? or repealed by 37 Hen. VIII. cap. 9, as being made against usury?

27. Stat. 3 Hen. V. *cap.* 6. Clipping, washing, and filing of money shall be adjudged high treason.

Revived by 5 Eliz. cap. 11.

28. Stat. 3 Hen. V. *cap.* 7. The justices assigned to take assizes shall have power to hear and determine as well of the counterfeiting, and of the bringing of false money into the realm, as of clipping, washing, and every other falsity of the money. And the justices of the peace shall have power to inquire of all such matters, and thereupon to make process by *capias* only against those which shall be thereof indicted.

Revived by 5 Eliz. cap. 11.

29. Stat. 9 Hen. V. stat. 1. *cap.* 11. None shall receive gold in payment, but by the king's weight.

30. Stat. 1 Hen. VI. *cap.* 1. The lords of the king's council may assign masters and workmen to make money of gold and silver, and to hold the exchanges of money in York, Bristol, and as many places as shall seem necessary.

32. Stat. 2 Hen. VI. *cap.* 6. No gold nor silver shall be carried out of the realm, unless it be for payment of the king's soldiers, upon pain of forfeiture of the value of the money carried out, to be

levied of him that shall carry it out. And he which thereof giveth knowledge to the council, or to the treasurer, shall have the fourth part of the forfeiture, except ransoms of English prisoners, and the money that the soldiers shall carry for their reasonable costs; so that the money be not carried away without the king's licence: and merchants, aliens, shall find surety in Chancery; every company for their company, that none of them shall carry out of the realm any gold or silver, or the value of the same: and if any of them do the contrary, and be gone over the sea, the pledges of his company shall pay the king the forfeiture, whereof he that shall give notice, shall have the fourth part.

32. Stat. II. Hen. VI. *cap.* 12. The master of the Mint shall keep his allay according to his indenture, and shall receive of every person that shall bring silver to the Mint, the same money at the true value as it is worth, according to the allay, upon pain to pay double damages; and the king's assayer, and the comptroller of the Mint shall be present when any bullion of silver is brought to the Mint, that the assayer may set the value, in case of a variance between the master and the merchant; and the comptroller to controul, as well silver that is brought to the Mint as carried out every two days, without reward, other than the fee which they take of the king upon pain to yield double damages: and the assayer and comptroller shall be expert men, having perfect knowledge in the mystery of goldsmiths and of the Mint: and neither the master of the Mint, nor the exchanger, shall sell gold or silver bullion brought to the Mint or to the exchange, but to apply the same only to the money, according to the indenture.

33. Stat. 8 Hen. VI. *cap.* 24. sect. 2. No merchant, alien, shall bind any of the king's people, by promise, covenant, or bond, to make payment in gold for any debt, nor refuse to receive payment in silver, upon pain of the double value: and no Englishman

glifhman fhall fell to any merchant alien any merchandizes, but for ready payment, or elfe in merchandizes to be contented in hand, upon pain of forfeiture of the fame.

34. Stat. 2. Hen. VII. *cap.* 6. No perfon fhall make exchange without the King's licence, nor make exchange of money to be paid within the land, but fuch as the king fhall depute thereto, upon the pains in the ftatute of king Richard contained.

Said to be repealed by 37 Hen. VIII. cap. 9; but quere.

35. Stat. 4. Henry VII. *cap.* 2. fe \dot{c} t. 3. All letters patent, and grants of offices, belonging to the Mint, without fees thereto belonging, fhall be void.

36. Stat. 19 H. VII. *cap.* 5. Groats, or pence, clipped, or impaired, except reasonable wearing, fhall not be current; but it fhall be lawful for any perfon, who having fuch pence or groats clipped or miniftred, to bring the fame to the king's Mint to be changed, or convert the fame into plate; and if the wardens, or comptroller of the Mint, execute not their office in fearching the coin, before it pafs from the Mint, they fhall forfeit their office, and make fine at the king's pleasure. No perfon fhall convey out of this realm any bullion, plate, or coin, of gold and filver, into Ireland, above the fum of fix fhillings and eight pence; nor convey any fuch bullion, plate, or coin, into any fhip, upon pain to forfeit the fame, and to have imprifonment, and make fine and ranfom at the king's will.

37. Stat. 5 and 6 Edward VI. *cap.* 19. fe \dot{c} t. 2. If any perfon exchange coined gold, filver, or money, receiving, or paying more in value for it than the fame fhall be declared by the king's proclamation to be current for, the money fo exchanged fhall be forfeit, and the parties offending fhall fuffer imprifonment one year, and make fine at the king's pleasure. The one moiety of the coin forfeited to be to
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the king, and the other moiety to the party that seizeth the same, or will sue for it.

38. Stat. 13 and 14 Car. II. *cap.* 31. No person shall melt any current silver money, upon pain of forfeiture of the same, and of the double value; the one half moiety to his majesty, and the other half moiety to the informers in any of his majesty's courts at Westminster; and the persons offending (if they be freemen of any city or corporation) shall, upon conviction, be disfranchised, and if they shall not be men, they shall suffer imprisonment six months next after their conviction.

39. Stat. 18 Car. II. *cap.* 5. sect. 1. Whatever person, native or foreigner, shall bring any foreign coin, plate, or bullion, or any manufacture of gold or silver, into his majesty's Mint to be coined, shall have the same assayed and coined with all convenient speed, without any diminution or charge for the assaying, coinage, or waste; so that for every pound troy of crown or standard gold, there shall be delivered out a pound troy of current coin of crown gold; and for every pound troy of sterling or standard silver, there shall be delivered out a pound troy of current coins of sterling.

40. Sect. 2. There shall be no preference in point of assaying or coinage; but the gold and silver brought in and coined, shall be in the same order delivered to the bringers, without preference of one before the other: and if any undue preference be made by any officers of the Mint, the party offending shall be liable to pay the value of the gold or silver brought in and not entered and delivered according to this act, with damages and costs to the party grieved, and shall be forejudged from his place; and if such preference be unduly made by any deputy or clerk, without privity of his master, such deputy or clerk only shall be liable to such action, and be for ever incapable of bearing office in any Mint.

41. Sect. 3.

41. Sect. 3. It shall not be any undue preference if the officers shall deliver out monies coined to any persons that demand the same upon subsequent entries, before others that did not come to demand their monies in their course, so as there be no money reserved for them.

42. Sect. 4. The master-worker of his majesty's Mints, shall, at the time of the delivery and entry of any gold or silver, give the bringers a bill denoting the weight, fineness, and value, together with the day and order of its delivery.

43. Sect. 5. No confiscation or restraint shall be made in the Mint of any gold or silver brought in to be coined, for any imbargo, breach of the peace, letters of mark, or reprisals, or war with any foreign nation, or upon any other pretence*.

44. Sect. 9. No monies leviable by this act shall be applied to any use other than to the defraying the charge of the Mints, and the encouragement of bringing in gold and silver to be coined; nor shall any of the said monies be issued out of the Exchequer, but by warrant of the Treasury to the masters and workers of the Mints, and mentioning that they are for the service aforesaid to be kept in his majesty's office of receipt in the Mints under the usual keys of the warden, master, and worker, and comptroller, and issued out according to the course of the Mints.

45. Sect. 10. There shall not be issued out of the Exchequer of the said monies, in any one year, for the salaries of the officers of the Mints, and towards the repairing of the building, and other necessaries for assaying and coining, above three thousand pounds; and the overplus shall be employed for

* The coinage duty granted by sect. 6 of the above act, is ten shillings for every ton of wines, vinegar, cyder, or beer, imported into the port of London, &c. and for every ton of brandy, wines, or strong waters, twenty shillings.

the expence, waste, and charge of assaying, melting down, and coinage, and buying of gold and silver to coin.

46. Sect. 11. This act shall continue until the twentieth of Decem^rber, 1671, and until the end of the session of parliament next following.

Continued by 4 Geo. II. cap. 12, for seven years, from the first of March, 1730, and to the end of the next session of parliament, as to all wines, &c. imported into Great-Britain.

47. Stat. 25 Car. II. cap. 8. sect. 3. During such time as the customs shall be under the management of commissioners, the monies collected for the coinage duties shall be paid to such officers as collect the customs, and by them paid to the receiver-general of the customs; and a certificate by them obtained yearly, or oftener, from the comptroller-general, with the allowance of the commissioners of their having so paid all the monies by them received, shall be to them a *quietus*, and free them from all other accounts.

48. Sect. 4. In case the customs shall be farmed, the monies shall be paid in the ports to such persons as shall be appointed by the Treasury.

49. Sect. 5. The monies shall be paid at the importation of the commodities charged, and under the same penalties as for non-payment of customs.

50. Sect. 6. The monies of the coinage duties, collected in the ports, shall be kept apart from all other monies, and paid monthly, at least, from the officers of the port of London; and quarterly from the officers of the out-ports to the receiver-general; and such receiver-general shall also keep the same distinct, and so pay the same, once in every month, into the receipt of the Exchequer; there also to be kept a-part from all other monies.

51. Sect. 7. It shall be lawful for the Treasury to allow the said officers, out of the said monies, salaries not exceedidg twelve pence in the pound.

52. Stat.

52. Stat. 6 and 7 Will. III. *cap.* 17. sect. 2. If any person shall, at any one time, receive or pay any silver money unclipped, for more than the same ought to go for, he shall forfeit ten pounds for every twenty shillings; and so in proportion for any greater or lesser sums: one moiety to his majesty, and the other moiety to the person who shall sue for the same, to be recovered with costs.

53. Sect. 4. If any person shall buy or sell, and knowingly have in his custody any clippings or filings of the coin, he shall forfeit the same, and five hundred pounds; one moiety to his majesty, and the other to the informer; and he shall also be branded on the right cheek with the letter R.

54. Sect. 9. Every person who shall apprehend any who have counterfeited the coin, or that for gain have diminished the same, or brought into the kingdom any clipped or counterfeit coin, and prosecute such persons until they be convicted, shall have from the sheriff, for every offender convicted, forty pounds, without fee, within one month after conviction, and demand made by tendering a certificate to the sheriff under the hand of the judge or justices before whom such offenders shall be convicted; and in case any dispute shall arise between the persons apprehending and prosecuting such traitors, the judge or justices shall, in their certificate, appoint the reward to be paid amongst the parties, in such proportions as shall be just: and if default of payment shall be made, such sheriff making default shall forfeit, to whom such money is due, double the sum he ought to have paid; to be recovered by them or their executors, &c. in any of his majesty's courts at Westminster, with treble costs.

55. Sect. 10. All sheriffs, upon producing such certificates, and the receipts for the receipts of the money, shall be allowed, upon their account, all monies which they shall disburse, as aforesaid, without fee.

56. Sect. 11.

56. Sect. 11. If there shall not be money sufficient in the hands of such sheriffs to reimburse them, they shall have the same repaid by the Treasury upon certificate from the comptroller of the pipe.

57. Sect. 12. If any person, being out of prison, shall be guilty of clipping, coining, counterfeiting, or diminishing the coin, and discover persons who shall commit any of the said crimes, so as two or more shall be convicted, such discoverer shall have his majesty's pardon for all such crimes; and if he be an apprentice, he shall be free.

58. Stat. 7 and 8 Wil. III. *cap.* 10, sect. 18. No person shall receive or pay any guineas at higher rate than twenty-six shillings for each; and the same proportion for half-guineas, double guineas, and five pound pieces: and in case any person shall offend herein, he shall forfeit double the value of the gold received or paid, and twenty pounds: one moiety to his majesty, and the other to the person who shall sue for the same; to be recovered with costs: and nothing in this act shall compel any person to receive guineas at the said rate.

59. Stat. 7 and 8 Will. III. *cap.* 19, sect. 19. No person shall utter or receive guineas at a higher rate than twenty-two shillings each, and proportionably for every greater or lesser price of coined gold; and whosoever shall offend, shall incur the penalties provided in stat. Will. III. *cap.* 10.

60. Stat. 8 Will. III. *cap.* 1, sect. 3. The master workman, or other officers of his majesty's Mint, in the Tower, shall set apart one or more mills, with other conveniencies, to be in the first place employed in the coinage of gold brought thither by any persons to be received, coined, and delivered, as by stat. 8, Car. II. *cap.* 5; so that the coinage of gold and silver be kept in distinct accounts: and such coining and delivering out gold in a distinct course, although there

there be silver remaining uncoined, shall not be interpreted any under preference.

61. Stat. 8 and 9 Will. III. *cap.* 26. sect. 1. No person, except persons employed by his majesty's Mints, for the use of the Mints only, or persons authorised by the Treasury) shall knowingly make or mend, or assist in the making or mending, of any puncheon, counter-puncheon, matrix, stamp, die, pattern, or mould of steel, or other metal, or of spaud, or fine founders earth, or sand, or other materials in which there shall be the figure of either side, or flat of any gold or silver coin current; nor shall knowingly make or mend, or assist in making or amending of any edger, or edging tool, not of common use in any trade, but contrived for making of money round the edges with letters, grainings, or other marks resembling those on money; nor any press for coinage, nor any cutting engine for cutting round planks by a screw out of flatted bars of gold, silver, or other metal; nor shall knowingly buy, sell, or conceal, or, without authority or sufficient excuse, knowingly have in his custody any such puncheon, &c. and if any person shall offend in the matters aforesaid, such offenders, their counsellors, procurors, aiders, and abettors, shall be guilty of high-treason.

62. Sect. 2. If any person shall, without authority, knowingly convey, or assist in the conveying out of his majesty's Mint any puncheon, or other instrument used about the coinage of money there, or any useful part of such instruments, as well the persons offending, their counsellors, procurors, aiders, or abettors, as also all persons knowingly receiving or concealing the same, shall be guilty of high-treason.

63. Sect. 3. If any person (other than the persons employed in his majesty's mints, or such as shall have authority from the Treasury), shall mark on the edges of any current coin, or if any persons shall
mark

mark on the edges of any diminished or counterfeit coin, with letters or grainings like those on the edges of money coined in his majesty's Mint, such offence shall be high-treason; and the offenders, their counsellors, procurors, aiders, or abettors, being convicted, shall suffer death, as in case of high-treason.

64. Sect. 4. If any person shall colour, guild, or case over with gold or silver, or with any wash, or materials producing the colour of gold or silver, any coin resembling the current coin, or any round blanks of base metal, or of course gold or silver of a fit size and figure to be coined, or shall gild over any silver blanks of a size and figure resembling the current gold coin, such persons, their counsellors, &c. shall be guilty of high-treason.

65. Sect. 5. If any puncheon, die, stamp, edger, cutting engine, press, flask, or other instrument for coining or counterfeiting gold or silver monies, or any part of such tool, shall be hid in any place, or found in the house or possession of any person not employed in coining in his majesty's mints, nor having the same by authority, any person's discovering, or required to seize the same, and to carry them to some justice of peace, to be produced in evidence against any person who shall be prosecuted for such offence; and after they shall have been produced in evidence, they shall, by order of the court, or in presence of some justice of peace, in case there be no trial, be destroyed; and if any counterfeit, or diminished money shall be produced in any court of justice, in evidence, or otherwise, the judges shall cause such monies to be cut in pieces in court, or in the presence of some justice of peace; and then to be delivered to such persons to whom the same shall appertain.

66. Sect. 6. If any person shall blanch copper for sale, or mix blanch'd copper with silver, or knowingly buy or sell, or offer to sale, blanch'd copper, alone or mixed with silver; or shall knowingly, or fraudulently

fraudulently buy, or sell, or offer to sale, any malleable composition, which shall be heavier than silver, and look, and touch, and wear like gold, but be worse than standard; or shall take, pay, or put off, any counterfeit milled money, or milled money unlawfully diminished, and not cut in pieces, at a lower rate than the same shall import, such person shall be guilty of felony.

67. Sect. 7. This act shall not make any corruption of blood, or make the wife of any offender to lose her dower; and persons accused of offences made treason or felony by this act, shall be tried by such evidence, and in such manner, as any offenders for counterfeiting the king's money.

68. Sect. 8. The crimes mentioned in the act 6 and 7 Will. III. *cap.* 17, may be heard and determined upon indictment, or presentment, either in his majesty's court of King's Bench, or before justices of oyer and terminer, or justices of assize and goal delivery:

69. Sect. 9. This act shall continue until the end of the next session of parliament, and no prosecution shall be made for any offence against this act, unless commenced within three months.

Made perpetual by 7 Ann. cap. 25.

70. Stat. 9 Will. III. *cap.* 2. sect. 1. No hammered silver coin shall be reported lawful coin of this realm.

71. Stat. 9 and 10 Will. III. *cap.* 21: sect. 1. It shall be lawful for any person to whom silver money shall be tendred, any piece whereof shall be diminished otherwise than by reasonable wearing; or that by the stamp, colour, or weight thereof, he shall suspect to be counterfeit, to cut or deface such piece; and if any piece so cut, &c. shall appear to be counterfeit, the person tendring the same shall bear the loss; but if the same shall be of due weight, and lawful money, the person that broke or defaced the same, shall take the same at the rate it was coined

for: and if any question arise, Whether the piece be counterfeit? it shall be heard and determined by the mayor, bailiff, or other chief officer of any city or town corporate, where such tender shall be made; and if out of the city, then by the next justice of peace.

71. Sect. 2. The tellers of the Receipt of Exchequer, their deputies and clerks, and the receivers general of every branch of revenue, shall break or deface every piece of counterfeit or unlawfvl diminished silver money that shall be tendred to them, to the use of his majesty; and the tellers, and the receivers general, &c. shall weigh, in whole sums, or otherwise, all silver monies by them received; and if the same appear counterfeit, or unlawfully diminished, the same shall not be received in the Exchequer, nor allowed them upon their accounts.

73. Stat. 1 Ann. *cap.* 9. sect. 2. The prosecution of such as offend against the act 8 Will. III. *cap.* 26, by making or mending any coining tool therein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within six months after such offence committed.

Re-enacted after the union by 7 Ann. cap. 25, sect. 2.

74. Stat. 4 and 5 Ann. *cap.* 22. It shall be lawful for the Treasury, by warrants to issue out of the coinage duty, the yearly sum of five hundred pounds, over and above the yearly sum of three thousand pounds mentioned in the act 18 Car. II. *cap.* 5, for the salaries of officers of the mints, and towards repairing the buildings, and other necessities.

75. Stat. 7 Ann. *cap.* 24. sect. 3. Over and above the sum not exceeding three thousand pounds, and five hundred pounds *per annum*, mentioned in the acts 18 Car. II. *cap.* 5, and 4 Ann. *cap.* 22, it shall be lawful for the Treasury, by warrants, to issue
out

out of the coinage duties yearly such sum as they shall think necessary, not exceeding one thousand two hundred pounds, for the salaries of officers of the mints in Scotland, and towards the providing buildings and other necessaries for assaying, and melting down, and coining in the mints of Scotland.

76. Sect. 4. Over and above the sums mentioned in the former acts for the uses of the Mint, it shall be lawful for the Treasury, by warrants, to issue out of the coinage duty, yearly, any sums not exceeding four hundred pounds, for the charges of officers, and others employed in the prosecution of offences concerning the coin in England.

77. Stat. 4 Geo. II. cap. 12. sect. 2. It shall be lawful for the Treasury, out of the coinage duties, or any other public supplies, to cause so much money to be applied as shall be necessary for defraying the expences of the mints of England and Scotland, by way of imprest, so as the same, together with the coinage duties, do not exceed in one year fifteen thousand pounds.

78. Stat. 12 Geo. II. cap. 5. sect. 1. The duties granted by the act 18 Car. II. for encouraging of coinage, and continued by several subsequent acts, shall be further continued upon all wines, vinegar, cyder and beer, imported into Great-Britain for the space of seven years, to commence from the first of March, 1738, and to the end of the then next session of parliament; during which time all acts of parliament concerning coinage, now in force, shall be put in execution.

79. Sect. 2. The Treasury are impowered, out of the monies arising by this act, or out of any other public supplies granted by parliament, to apply so much as shall be necessary for defraying the expences of the mints of England and Scotland, by way of imprest, and upon account for that service;

so as the same, together with the coinage duties arising by this act, do not exceed fifteen thousand pounds *per annum*; to be issued out of the Exchequer to the master of the Mint in England and Scotland respectively.

Continued by 19 Geo. II. cap. 14, for seven years, and by 27 Geo. II. cap. 11, continued for seven years longer, to commence from the first of March, 1754, and until the end of the first session of parliament then next following.



A W A R D.

Sect. 1. *What it is, and what things may be submitted to Arbitration.*

1. **A**WARD (from the French *Agard*) is the judgment and arbitration of one or more persons, at the request of two parties who are at variance, for ending the matter in dispute without public authority- *Dictum quod ad custodiendum seu observandum partibus imponitur.* Spelm.

2. Where the right of freehold is in debate, the property cannot be transferred by an award; for the arbitrators are in the room of the parties themselves, and act in their stead as far as commissioned; whatever therefore the parties can do, may be done by the arbitrators, but the parties cannot pass corporal inheritances without solemn livery. 1 Roll. Ab. 242. 14 H. IV. 19, 24. 9 H. VI. 6. 3 H. IV. 6. 11 H. IV. 12. Keilw. 99. See paragraph 3.

3. But if the condition of an obligation is to stand to the award of J. S. touching such lands, and the arbitrator awards the land to one, and that the other should release to him, if he do not this, the obligation is forfeited. If the arbitrator awards the land to one, (without directing any thing further to be done) it seems the obligation is not forfeited, though the other do not convey to him to make him a good title; for the arbitrator hath not awarded any act to be done by the party, and the award itself cannot transfer the right, and so must be void; and then the condition of the obligation cannot be forfeited; for the awarding the lands to one cannot be expounded, that the other shall infeoff him. If,

where there is no bond, the arbitrator award, that one shall incoff the other, it seems, an action on the case may be maintained for not doing it; for the award in itself is as good as if there were a bond, and then there is the same reason an action should lie, as that the condition of the obligation should be forfeited; for if such an award were void, then the condition of the obligation to perform it could not be broken. *See the authorities cited in the preceding paragraph.*

4. An annuity is not determinable by award; for it is reckoned in nature of a freehold, and therefore cannot pass without the deed of the party. *1 Rol. Ab. 266.*

5. It has been doubted, whether leases for years, being chattels real, could be transferred by award; therefore it seems safest, when the controversy relates to them, that the parties be bound in mutual obligations to perform the award, and then if the arbitrators award, that one shall assign, transfer, &c. the lease to the other, if he refuses, he forfeits his obligation.

6. An award of the arrears of rent reserved on a lease for years, is good. *1 Rol. Abr. 264.*

7. The detaining a charter of feoffment, as it relates to a real thing, cannot be submitted; for damages only can be recovered for such taking.

8. Causes criminal are not arbitrable, because they ought to be punished for the common good. And though the submission be by bond, yet the obligation is void, and the parties may be punished for entering into such bonds. *2 Vent. 109.*

9. Causes matrimonial seem not arbitrable; because marriage ought to be free, and religion disallows the severing those whom the church hath joined: but the damages a person sustained by a promise of marriage, or any thing relating to a marriage portion, may be submitted. *1 Rol. Abr. 252.*

10. Debts due by specialty cannot be discharged by naked award; but if the submission were by bond,

bond, the award would be a good bar, for one specialty may be dissolved by another. *Dyer* 51. *Cro. Jac.* 99.

11. A certain and fixed debt is not discharged by an award; for the end and design of an arbitration is to reduce uncertain debts and duties to a certainty; and to award a man a certain debt is to give him no more, nor do any greater thing for him than was done before: for now he can have but an action, and that he might have before, and to give him less than he had before, is to do him a manifest injustice, which the arbitrator cannot do. *1 Rol. Abr.* 264.

12. But if twenty pounds be due to a man, and he and another submit all personal things, &c. to arbitration, there if the arbitrator award ten pounds, it is a good award, because there were other uncertain things submitted, and the arbitrator had consideration of all, and set one against the other in making the award, so as perhaps the debt of twenty pounds was diminished in consideration of some trespasses done by him to the other party. *Allen* 25. *10 H. VII.* 4. See *1 Lev.* 292. *2 Saund.* 190. *2 Mod.* 303.

13. It is held clearly, that all chattels personal, and personal actions, such as trespass, conspiracy, maintainance, &c. may be determined by arbitration, and the right transferred by naked award, tho' the submission were not by deed; for these being transferrable by the party himself, without any solemnity, whatever the parties themselves could do, may be done by the arbitrators, who are their substitutes, and stand in their place; and if on these submissions, without deed, the arbitrators award the party a sum certain, he may bring an action of debt for it; but if they award the doing of some other thing, which is beneficial to him, he must bring his action on the case. *9 Co.* 78.

14. The arbitrators cannot make an award of matters different from those which were submitted;

therefore if the submission be of ewes with lamb, and after the submission the lambs are yeaned, they cannot arbitrate concerning the lambs. 1 *Keb.* 600. 2 *West. Symb. Sect.* 32.

Sect. 2. Who may submit to arbitration.

1. Persons attainted or outlawed cannot submit to arbitration; for they have no property, and cannot by the law controvert any thing. 3 *Hen. VI.* 26.

2. Persons who cannot contract, cannot submit to arbitration; therefore *femes covert*, persons compelled by threats and imprisonment, persons professed in religion, cannot submit. 9 *Edw. III.* 23. *Latch.* 27.

3. The husband may submit the chattels he hath in right of his wife to an award; for he may dispose of them. *Style* 351. *March* 77, 78.

4. If the husband submits to arbitration the chattels the wife has, as executrix or administratrix, this shall bind the wife; because the wife cannot personate any one, without the husband, during coverture. *Cro. Jac.* 447.

But query? for by some opinions the wife, in this case, may submit to an award without the husband; for when the husband allows her a power of administration, he must suffer her to act pursuant to the trust reposed in her, and his express consent to her administration is a tacit consent to all future actions of that nature, and consequently are his own acts; but whether this makes him liable to a devastavit, is a greater question; because they are not properly acts of administration, and consequently he never submitted to them. See 10. H. 7. 30. 5 Co. 27.

5. A dean without the chapter, a mayor without his commonalty, the master of a college or hospital without his fellows, cannot submit to an award;
for

for the submission has the force of a contract, and they cannot contract without them. 21 *Edw.* 4.

13.

6. If one party and the deputy or attorney of the other party submit to an award, this is well enough; for the act of my deputy is my own act. *Dyer* 21. 1 *Rol. Abr.* 244.

7. If several persons do a trespass, and one of the wrong-doers and the party to whom it is done submit to arbitration, and an award is made, the other persons shall take advantage of it by way of extinguishment of the trespass; the same law where the party releases to one of them; for in both cases a satisfaction really is, or is presumed to be made, and a man cannot receive a double compensation for the same wrong. 1 *Rol. Abr.* 268.

8. If several persons on the one part, and several persons on the other, submit generally to an award, the arbitrators have not only power to determine matters between them jointly, but severally and distinctly also; and an award between one only of the one side, and another of the other side, is good; for this is not doing less than the commission warrants, since there is an authority in it to determine matters distinctly between them; for the submission is of *all* matters; so that it contains as well all things severally between each of them, as jointly between them all, and perhaps there may be a cause of award between the others. 1 *Rol. Abr.* 261. *Hard.* 399.

Sect. 3. *Of the several kinds of submission to Arbitration.*

1. The submission is the authority given by the parties in controversy to the arbitrators, to determine and end their grievances; and this being a contract, or agreement, must not be taken strictly but largely, and according to the intent of the parties submitting. *West. Symb. part 2. sect. 1, 2.*

2. This

2. This submission may be by word or deed: if the submission be by word, there is no remedy to enforce the party to perform the award, but reciprocal actions on the case, and an action of debt will lie, if money be awarded; for it is in nature of a simple contract. 1 Keb. 600.

3. If the submission be without deed, it may be revoked without deed, and the party shall lose nothing; for *ex nuda submissione non oritur actio*. 8 Co. 81, 82. But the party must give notice of the revocation. 1 Sid. 281. If you plead *quod revocavit*, without giving any notice to the arbitrators, the party may take issue upon the revocation; for not to let them know you have revoked, is no revoking; for *de non apparentibus et non existentibus eadem est ratio*, but it need not be shewn in pleading that notice was given, for there *quod revocavit* necessarily implies notice. 8 Co. 82.

4. If the submission be by deed, it is of its own nature * countermandable, though made irrevocable by the express words of the deed; for the arbitrators being constituted and put in the place of the parties, by their consent, to act for them, they can no longer act than they have such consent. 1 Sid. 281. 8 Co. 82.

5. But if a man obliges himself to stand to an award, if the party revokes it according to his power, he hath forfeited his obligation; for the making the award becomes impossible by his own default, and therefore the obligation is simple; but if it be without obligation, he forfeits nothing. 8 Co. 82, 83.

6. If several plaintiffs or defendants submit themselves to an award, one cannot revoke the submission without the other; for joint acts are considered as the acts of one person, and there can be no revocation

* But it cannot be countermanded without deed, *quia solvitur eodem modo, quo ligatur*. 1 Brownl. 62.

tion without the act of that person who made the submission. 1 *Brownl.* 62.

7. If a feme sole submits to arbitration, and afterwards marries, this is a revocation of the submission; and if it be by bond, the bond is forfeited. 1 *Jones*, 388.

8. If one have judgment in an ejectment, and then they submit the controversy to arbitration; but before any award be made, he sues out execution, it is a forfeiture of the bond; for he is the cause no award can be made. *T. Jones*, 134.

9. A submission may be made a rule of court, pursuant to the statute 9 and 10 *Wil.* III. and it is said, that although the submission be by bond, yet the party may have it made a rule of court; in which case, it is said, he may proceed on the bond, and likewise have an attachment for not performing the award. See 1 *Sid.* 54.

10. By the 9 and 10 *W.* III. it is enacted, That
 “ it shall and may be lawful for all merchants and
 “ traders, and others, desiring to end any contro-
 “ versy, suit, or quarrel, (for which there is no other
 “ remedy but by personal action, or suit in equity)
 “ by arbitration, to agree that their submission of the
 “ suit to the award or umpirage of any person or
 “ persons, should be made a rule of any of his ma-
 “ jesty’s courts of record, which the parties shall
 “ chuse, and to insert such their agreement in their
 “ submission, or the condition of the bond or pro-
 “ mise, whereby they oblige themselves respectively
 “ to submit to the award or umpirage of any person
 “ or persons; which agreement being so made and
 “ inserted in their submission, or promise, or condi-
 “ tion of their respective bonds, shall or may, upon
 “ producing an affidavit thereof, made by the wit-
 “ nesses thereunto, or any one of them, in the court
 “ of which the same is agreed to be made a rule,
 “ and reading and filing the said affidavit in court,
 “ be entered of record in such court, and a rule shall
 “ thereupon.

“thereupon be made by the said court, that the
 “parties shall submit to, and finally be concluded
 “by the arbitration or umpirage which shall be
 “made concerning them by the arbitrator or um-
 “pire, pursuant to such submission; and in case of
 “disobedience to such arbitration or umpirage, the
 “party refusing or neglecting to perform and exe-
 “cute the same, or any part thereof, shall be sub-
 “ject to all the penalties of contemning a rule of
 “court, where he is a suitor or defendant in such
 “court, and the court, on motion, shall issue pro-
 “cess accordingly, which process shall not be stop-
 “ped or delayed in its execution by any order, rule,
 “command, or process of any other court, either of
 “law or equity, unless it shall be made appear on
 “oath to such court, that the arbitrators or umpire
 “misbehaved themselves, and that such award, ar-
 “bitration, or umpirage, was procured by corrup-
 “tion, or other undue means: and that any arbi-
 “tration or umpirage, procured by corruption or
 “undue means, shall be judged and esteemed void
 “and of none effect, and accordingly be set aside by
 “any court of law or equity; so as complaint of
 “such corruption or undue practice be made in the
 “court where the rule is made for submission to
 “such arbitration or umpirage, before the last day
 “of the next term after such arbitration or umpirage
 “made and published to the parties.”

11. An arbitration bond had these words, *and if the obligor shall consent, that his submission shall be made a rule of court, that then, &c.* Upon motion to make this submission a rule of court, it was objected, that these words did not imply his consent, but if he would forfeit his bond, he need not let it be made a rule of court; yet, because this clause could be inserted for no other purpose, the court took these conditional words to be a sufficient indication of consent. 1 Salk. 72.

12. A matter being referred by rule of court to the determination of the judges of assize, it was moved,

moved, that the judges determination might be made a rule of court ; and *per Holt*. where a matter is referred to arbitrators by rule of court, and they make their award, we will compell a performance of it, as much as if the award were part of the rule, so a new rule is needless. 1 *Salk.* 71.

Note, the constant practice is to make the rule at *nisi prius* a rule of the court above, which is always granted ; for the non performance of it, while the matter was *sub judice*, was no contempt. 1 *Salk.* 73. Also the party must be required personally to perform the award, and such personal demand must be made out by affidavit, otherwise the court will not grant an attachment. 1 *Salk.* 83.

13. On motion to set aside an award, because the arbitrators went on without giving the party time to be heard, or produce a witness, *Holt* said, that the arbitrators being judges of the party's own chusing, he shall not come and say, that they have not done him justice, and put the court to examine it ; *aliter*, when they exceed their authority. 1 *Salk.* 73. But awards have been frequently set aside, especially in equity, where the arbitrators appeared to have been mistaken, or have been guilty of corruption or partiality ; as if they have an intent in the thing in controversy. 2 *Vern.* 251. So where there are three arbitrators, and two of them by fraud or force exclude the other ; or if they have private meetings, and admit one of the parties, and give no notice to the other. 2 *Vern.* 514. So where they awarded four hundred ninety-five pounds against one of the parties, for calling the other, who was a butcher, a *bankrupt knave*, to repair his honour, as they called it. 3 *Chan. Rep.* 76. 2 *Vern.* 251. See 1 *Vern.* 157. So where the submission was to arbitrators, and they had power to chuse an umpire, which they did, by throwing *cross* and *pile* who should name him ; and for this the court set aside the award. 2 *Vern.* 485.

14. Sub-

14. Submissions are likewise general, as of all controversies, debts, dues, &c. and here the arbitrators are not obliged to determine all matters disclosed, but their arbitration of some things will be good, though they leave other things undone; but where the submission is special or conditional, *ita quod* an award be made of all controversies depending, they ought to determine all matters of which they have notice; because here by the express words of the authority, I do not own his determination, unless all matters in controversy are settled; and therefore to determine one without the others, is to act contrary to the authority; but if upon such a submission, the arbitrators make an award but of one thing, it shall be intended there were no others to make an award of, unless the other side shew there was, and that the arbitrators had notice thereof. 1 *Brownl.* 63. 1 *Rol. Abr.* 257.

Sect. 4. *Of the Arbitrators, and their Authority:*

1. The arbitrators are persons indifferently chosen, to determine the matters in controversy according to their own minds, whether they be matters of law or fact. Infants, persons excommunicated, outlawed, &c. may be arbitrators; for every person must use his own discretion in the choice of his judges; and being at liberty to choose whom he likes best, cannot afterwards object the want of honesty or understanding to them, or that they have not done him justice. *West. Symb. part 2, sect. 2. Hard. 44.*

2. The arbitrators are personally trusted with the authority, and it is not within their power to assign it; therefore, if an award be to stand to the determination of a stranger, this is void; but if the award be, that an arbitrament made by J. S. shall stand, this is good; because it is their own award, though it refers to the act of another: but though the

the arbitrators cannot transfer their power, yet they may award, that others shall do a ministerial act in subserviency to their award; for what is done by such persons, is done by them as servants and instruments of the arbitrators, and is the act of the arbitrator himself; as that a conveyance should be made as counsel should direct; such costs paid as the prothonotary should tax, is a good award. *5 Co. 78. 1 Roll. Abr. 251.*

3. The arbitrators cannot make their award by parcels at several times, for when they have made an award they have executed their authority, and can do no more; and therefore, if two submit all debts, trespasses, &c. and the arbitrators one day make an award of the debts, and of the trespasses another day, this is not good as to the trespasses; but they may deliberate of one thing one day, and of another thing the other day, and then make an entire award of the whole. Also an award made in the night is good; for the party's attendance is not requisite: but where an act cannot be done without personal attendance of a third person, it cannot be in the night. *Cro. Eliz. 676. 1 Roll Abr. 250.*

4. The arbitrators cannot reserve to themselves a future power, since that would enable them to make a double award, without the interposition of those who empowered them at first. *Hob. 218. 1 Sid. 59.*

5. If a submission be made to A and B, *when their occasion will permit*, convenient time must be given, after request; and if no arbitration then made, the parties may revoke. *2 Keb. 10.*

6. If there be a submission to arbitration, and if they cannot agree before the first of May, then the submission is made to J. S. to be the umpire, to be made before a certain day then next to come. If the arbitrators never discourse about the matter, so as there is no disagreement between them; yet if they make no award before the day, the umpire may determine the matter; for these words, *if they cannot agree,*

agree, are not to be taken literally, but only, that if they do make no award, that then, &c. 1 *Roll. Abr.* 261.

7. If the condition of an obligation be to stand to the award of certain persons, A and B, and J. S. being umpire for both parties; in this case an award by A and B is good; for *umpire*, in the common signification of the word, denotes a person that is to make an end of the matter, if the others cannot. 1 *Roll. Abr.* 261, 262.

8. If a submission be to four, and to the umpirage of J. S. the four and J. S. may join in the making of the award; otherwise, if their power had been divided in the submission, as if it had been to the four, and if they could not agree, then to J. S. 1 *Bulst.* 184.

9. If the arbitrators and umpire have the same time allotted them to make their award in the submission, as to the umpire, it is not absolutely void; for if one of the arbitrators dies, then the umpire may determine the matters, otherwise not; for two different judges cannot have a concurrent jurisdiction of the same thing; and a disagreement between the arbitrators at their first meeting, gives no power to the umpire to interpose; because, though they do not agree at their first meeting, they may at the next. 1 *Roll. Abr.* 261. 1 *Sid.* 428, 455.

10. If the condition of an obligation be to stand to the award of A, B, C and D, *ita quod*, the said award, before such a day, be made in writing by the said A, B, C, and D; or any two of them, under their hands, &c. any two of the arbitrators, without the rest, may make an award; for though by the first part they are bound to stand to the award of those four, yet their power is divided by the subsequent words; and the *ita quod* is but an explanation of the condition; and the whole makes but one sentence. *Yelv.* 203. 1 *Ven.* 50. 2 *Keb.* 57.

11. The condition of a bond was, *If the arbitrators make an award on or before the nineteenth of February,*

ary, &c. and if they do not make it before, &c. their authority doth not determine till after the nineteenth, and the award cannot be made by the umpire before the twentieth. 1 *Mod.* 274.

12. If the arbitrators have time to the tenth of June, and if they agree not to nominate one to determine it by the said tenth; here, if the arbitrators choose an umpire, that determines their power; for it seems plainly the design of the parties, that either one or the other may determine it by that time, and not that both shall have concurrent jurisdictions. 1 *Rol. Abr.* 261. 1 *Sid.* 428.

13. If the arbitrators make an award of part, during their time, the umpire cannot make an award of the rest, unless the submission be, that if the arbitrators make an award of part, or of none, then the umpire may make an award of the part remaining or the whole. 1 *Rol. Abr.* 262.

14. If the condition of an obligation be to stand the award of A and B, so as the said award be made before such a day, and if they make no award, then to stand to the award of such umpire as the said A and B shall nominate; so as the said umpire do make his award before another day; and the arbitrators before the first day make no award, but afterwards name C to be umpire, who thereupon immediately refuses; and the arbitrators afterwards nominate D, who before the last day makes an award; this is a good award: for the nomination of C to be umpire did not make him so; but when he refused, it amounted to no more than a bare proposal to him; and the form of pleading always is *suscepto super se onere arbitri*; so that it is the acceptance makes him umpire. 2 *Vent.* 113, 114. *Tryppit* and *Eyres*, adjudged by three judges against *Pollexfen*, chief justice, who held that C might have proceeded notwithstanding his refusal; and there could not be two concurrent jurisdictions in several persons. 3 *Lev.* 263. S. C. See 1 *Salk.* 70, where, *per Holt*, if the arbitrators

trators choose an umpire who refuses, they cannot revoke or choose again, for they have executed their authority; *aliter*, if they choose him on condition he do accept: but Rooksby doubted whether an express condition would make a difference, because it seemed to be implied.

15. If the condition of an obligation be, That whereas A, and his son, of one part, &c. have submitted to the award of B and C, *ita quod*, &c. before the first of May; and if they make none, to the award of such umpire as they should choose to be made before the first of June; and the arbitrators make no award, but choose an umpire who makes an award; but *quoad* the son awards nothing; this is a void award; for though the *ita quod* be in the clause referring to the arbitrators, and the award is made by the umpire, yet the *ita quod* relates by construction to the umpire, as well as the arbitrators. 1 Lev. 139, 140. *Bean and Newberry*.

Sect. 5. *Of the Award, and what shall be deemed a Good Award, and what not.*

1. THE courts of justice have of late been more liberal in the construction of awards than formerly, and many of the nicest distinctions to be met with in the books, are by no means to be admitted as precedents in expounding awards at this day; and this the courts do in furtherance of justice, and for quieting of controversies: however, as an award is a judgment, and can only be expounded by itself, without the aid of an averment of matters *dehors* [extrinsic] to explain the meaning of the arbitrators, the following rules must be observed in it:

1. It must be made according to the submission. See page 35, paragraph 2, to page 38, paragraph 23.

2. It ought to be certain. See page 38, paragraph 23, to page 42, paragraph 42.

3. It

3. It ought to be equal, and mutually satisfactory. *See paragraph 42, to paragraph 59.*

4. It must be lawful and possible. *See paragraph 59, to paragraph 70.*

5. It must be final. *See paragraph 70.*

2. First. If an award be made of any other thing than what is contained in the submission, it is void; for no act is my own, or binding to me, unless done by me, or by commission from me. *Dyer, 242. Plowd, 396.*

3. If arbitrators award to do an act to a stranger, this is good; for the stranger is put by the arbitrators in the place of the party, and they have power to award this act, since it is not impossible or unequal, and it relates to the submission. *1 Rol. Abr. 248. 10 Co. 131.*

4. But an award, that an act should be done by a stranger, is void, because he is not within the submission. *Hard. 46.*

5. If two submit to award all actions, and the arbitrators award a release of all actions till the time of the award, some books have said that this is void for the whole; because it extends to things partly in the submission, and partly to things out of it, and it is one entire act; for, say they, to do that act they are not obliged, because not within the submission; and to do an act relating only to things contained in the submission, is another act from what is awarded: others have said, that this is not void, unless there are shewn, on the other side, causes of action arising between the time of making the award; otherwise none shall be intended: and then the release only relates to the things in submission. *1 Rol. Rep. 45, 162, 270. Vanlore and Trip.*

6. But it has been resolved, and seems now settled, that the act is not entire; for he may release all actions to the time of the submission: for though there is one deed of release awarded, yet that thing relates to several things that are dividable in their own na-

ture one from the other ; and so it shall be good for what is in the submission, and void for the residue. 3 *Lev.* 188. 1 *Silk.* 74.

7. The arbitrators cannot bind a man's liberty, or right to real things, where personal things are submitted ; and therefore, if they award service for two years, or a release of the right of lands in satisfaction for a trespass, this is void ; for nobody can be supposed to submit more than his personal estate to answer a personal injury, for *that* only might be taken in execution for it by the common law ; but his personal estate may be bound to answer it ; therefore, if the arbitrators award a horse, money, a quart of wine, in satisfaction for a trespass, this is good ; for here a new personal duty is raised instead of the former, and to satisfy out of the personal estate, is necessarily implied in the submission ; for this is a means necessary to quiet the matters. 1 *Rol. Abr.* 243.

8. If two submit to award all quarrels concerning tithes in a place certain, and the arbitrator awards that one shall pay to the other twenty pounds, and the other should release to him all actions, this shall be intended all actions concerning the tithe, unless the contrary appear on the other side ; and the actions may be severed : and this shall be good for acts in the submission, and void for the rest. *Cro. Jac.* 66.

9. A submission of all debts and demands, and a release of all judgments, executions, and extents awarded, is a good award. 2 *Saund.* 190.

10. A submission of all matters between the plaintiff and another, and an award made of things that the party hath in right of his wife, is good ; for these things are comprehended under the words *all matters.* 3 *Bulst.* 65.

11. A submission of all injuries, an award of all debts, duties, and trespasses, a good award ; for whatsoever is against law, is an injury. 3 *Bulst.* 312.

12. A submission of all actions now depending, and an award of all actions, good; for it shall be intended actions depending. *Cro. Eliz.* 66.

13. There is a controversy between A and B, on one part, and C, D, and E, on the other part; and C for himself, and D and E, submits the matter, and promises to stand to the award. If the award be, that C shall pay so much in satisfaction of the controversy, it shall bind him, though it concerns D and E, who are strangers to the submission; in as much as the thing awarded is to be done by him, and not by the strangers to the submission. *1 Rol. Abr.* 244.

14. If there be a controversy between the parson and the parishioners, whether tithes shall be paid in *specie* or not, and they submit all controversies, and the arbitrators award that they shall pay so much a year for the tithes, this is good; for that was the debate on the award. *1 Rol. Abr.* 254.

15. If the submission be of all controversies to the time of the submission, and the award be that one of them should deliver up an obligation made since the submission, in satisfaction of all matters, &c. this is good, because the bond is given only in satisfaction. *1 Rol. Abr.* 246.

16. An award may be good, though part of it be made of a thing not within the submission; as if an award be to pay one thousand pounds, and to procure a stranger to pay twenty-two pounds *per annum*, the plaintiff must lay the breach in not paying the one thousand pounds; for as to the other part, it is wholly void. *Cro. Jac.* 149.

17. If an award be good for part, and void for part, the plaintiff may assign the breach, that the defendant did not perform the thing submitted, *nec performavit in aliquo*; for it shall refer only to that in the submission, for the rest is void, and not to be performed. *2 Rol. Rep.* 46.

18. If the arbitrators award on one side an act contained in the submission, and on the other side an act out of it, this is a void award for the whole; for this is unequal, because there is something on the one side awarded only, and nothing on the other; for what they intended to ballance it with on the other, appears to be void. *Cro. Jac.* 149.

19. If the arbitrators award ten pounds to one of the parties, and five pounds to a stranger, this is good as to the party himself, and void for the stranger. *2 Saund.* 293.

20. An award may be good, though made of less than is contained in the submission; as if the submission be of all actions, trespasses, demands, and controversies, and the award be of some only, this is good; for no more shall be supposed made known to the arbitrator: and if there be other causes of action in being, and they be made known to the arbitrator, they must be shewn on the other side; and this as well where the submission is conditional by *ita quod*, as where it is absolute; for the award being made *de premissis*, shall be supposed to settle all things. *8 Co.* 98. *Hob.* 49.

21. If the award be conditioned to be delivered in writing, and under hand and seal, the circumstances must be observed, or the award is void; and therefore if it be delivered under the seal only, it is not sufficient. *2 Rol. Rep.* 24.

22. If two submit all actions till the ninth of June, *ita quod arbitrium fiat de premissis*, and award is made of all actions till the seventh, some have said this is less than the submission, and void: but the better opinion is, that this is well enough, especially unless there be shewn, on the other side, an action arising between the seventh and ninth. *Cro. Jac.* 578.

23. *Second rule.* See page 34. As an award is in nature of a judgment, it ought to be wholly decisive; for it doth not determine the matter, it becomes

comes the cause of a new controversy : therefore if the arbitrators award a bond for quiet enjoyment of lands, without appointing a certain sum, this is a void award, and the party is not obliged to give bond to the value of the land ; for the sense of the bond must be supplied by averment : now it hath the credit of a judgment, there can be no interpretation made of the award, but by the words of the award itself ; for if it receives its meaning from any matters out of the award, the mind of the arbitrators is only guessed at, and not expressed ; but the parties intended to be obliged, only by what the arbitrators themselves declare to be their award : and were the bond to be according to the value, they cannot assign their power to any person to assess the value. 5 Co. 77. *Cro. Eliz.* 432. *Dyer*, 242.

24. So if the arbitrators award that one party shall give security to the other, for the payment of sixteen pounds, this is not a good award, because it doth not appear what security, whether by bond or otherwise. *Cro. Jac.* 314.

25. If the condition of an obligation be to submit to an award all controversies between A and B ; and an award is made that A shall permit B to enjoy certain leases of lands purchased from J. S. and that B shall pay the rents, and perform the covenants, and deliver to A a true copy of the leases, and pay the arrears to the time of the purchase from J. S. this is a good award as to the rents and covenants, though not particularly specified ; for it is true an award is to be interpreted by its own words, and not by any matter out of the award, which doth not appear in the words : but when the words of an award have relation to things certain out of the award, these things may be averred ; for that is the express mind of the arbitrators, which they have expressly referred to : but as to the arrears, the award is void, because they have not referred to any matter that falls within the cognizance of B ; for he cannot compel A,

or J. S. to set the time of the purchase; and an award of what cannot be certainly done, is not a certain determination. 1 *Rol. Abr.* 261.

26. If an award be that one shall acquit the other of an obligation of two hundred pounds, *aut eo circiter*, and the party is bound in an obligation of one hundred and five pounds, *aut eo circiter*, this is a good award. 1 *Rol. Abr.* 263. *March* 81 S. C.

27. If an award be that one shall pay the other six pounds on the twenty-first of May, and that the other should release his right in certain lands *prædict* *primo die Maij*, omitting *viceſimo*, not good, because there was not any former day before-mentioned; and so the mind of the arbitrators not understood. 1 *Rol. Abr.* 263.

28. If an award be made between A and B, touching certain quarters of malt delivered by A to B, that B shall pay to A so much for every quarter as a quarter of malt was then sold for; this is void, because not said at what market price, for one market may be much dearer than another. 1 *Rol. Abr.* 364.

29. If A and B, merchants, and C and D, with all the other owners and mariners, submit to the award of J. S. concerning a ship taken by way of reprizal, and A and B enter into an obligation on one side; and C and D on the other; and one thousand pounds is awarded to C and D, and to the rest of the owners and mariners; this is a good award, though every man has not a certain allotment; for C and D submit jointly in the name of the rest; and therefore an award of any thing to them, as one person, without subdivision, is good; and C and D being intrusted for the rest, they are bound to make a reasonable division; if not at common law, at least in Chancery. 1 *Rol. Abr.* 249.

30. If an award be made that A shall pay B his day's work and task work, and B should then pay twenty-five pounds to A, and then they should make each

each other general releases; this is a void award, and cannot be helped by averment that he paid such a certain sum for day's work and task work, because the award is void in itself, by not settling the certain sum; and if that is void upon which the subsequent payment and releases are to be made, the whole award must be void. 2 *Saund.* 292.

31. An award is made of forty pounds, and mutual releases; but if it shall appear to the arbitrators that one of them stands obliged, &c. that then so much shall be deducted, this makes the whole award void; for it is uncertain how much will be due: but if the award had been, that if any bill of debt appears, that should be deducted, that, it seems, would be a good award: and though he awards mutual releases, which would make a final end of all, yet it appears that was to be after payment; and therefore, that part of the award shall not stand alone, for that is contrary to the intent of the award: so if the arbitrators make an award, with a *proviso* at the end of it, that if they do such an act the whole award shall be void, the whole award is void: for the award ought in present to be certain. *Hard.* 45. *Cro. Jac.* 149.

32. An award that one shall pay part of the charge of the voyage, and allow his part of the loss that shall come to the ship upon account, is good; for it may be reduced to certainty. 1 *Roll. Abr.* 251.

33. If an award be, that one of the parties shall pay to the other so much as is due in conscience, this is a void award. *Stile* 28.

34. Five pounds quit-rents, and other small things, is void for the uncertainty. *March* 144.

35. An award to pay so much money as such land is worth, is void for the uncertainty. *Skin.* 248.

36. An award that one of the parties shall account with the other, not good, because the matter is not settled. *Fitz. Abr. Tit. Award.* 37.

37. If the submission be of two hundred acres, called *Kelfstorne Ling*, and the award be concerning the waste lands in the town of K, this award is void, and cannot be helped out with an averment: so if money be awarded to be paid by one, and it is not said in satisfaction of what he owes the other, that cannot be averred. *Dyer*, 242. 1 *Rol. Abr.* 203.

38. If A commits a nuisance to B, by erecting scaffolds on his own ground, and the arbitrators award, that the scaffolds shall be removed by A, on whose grounds they are; for though any person may by law remove a nuisance, yet the arbitrators, who are judges of equity, as well as law, must be understood to intend it of him who committed the nuisance; and therefore the award not void for uncertainty. 6 *Mod.* 244.

39. An award to pay the charges of such a suit is good, because it is the intent of the arbitrators, it should be reduced to a certainty by the attorney's bill, who is the only person can know the certainty. *Cro. Car.* 383. 2 *Vent.* 242.

40. Where the award was to pay all the expences of such a suit, and all reasonable expences, *circa sec-tam præd.* and it was admitted, *per Cur.* to be void for uncertainty; but to pay such costs or charges as the master or prothonotary shall tax, has been always held good. 1 *Sid.* 358.

41. An award was, that one of the parties, he or his executors, should release; and my lord *Holt* inclined to think, that it may be construed that *he and his executors* should release. 1 *Salk.* 69.

42. *Third rule.* See page 35. Awards must not be on one side only. This must be understood thus: that all controversies being between two parties, that which is awarded to be done to one, must be an advantage to both; so as to end the controversy, and discharge one, as well as give satisfaction to the other; for if it doth not, it is manifestly unjust: and therefore, whenever it appears to the court that,
not-

notwithstanding the award, the thing remains a duty, as before, and is not discharged; that apparently is an award on one side, and consequently is void: not that where one party is by the award to have something paid him, or the like, and not the other, that that award should be naught: for perhaps nothing may be due to him, and he might be the only trespasser in the case. *1 Rol. Abr. 253.*

43. Thus in case of a trespass submitted, The arbitrators award that one shall pay the other three pounds; this is void, because only on one side; for it is not said for what, and so the trespass is not discharged, and then the other party hath no advantage by the award: but if it were awarded *de et super præmissis*, it would be well enough: likewise if the award had been, that he shall pay three pounds for a trespass, it had been good; and yet only one was to do an act, but then the trespass by that award had been discharged. *1 Rol. Abr. 253, 254.*

44. A and B submit all actions had by A against B, and all actions by B against A, and the arbitrators award that A shall go quit of all actions had by B against him; this is naught, because they say nothing as to the other actions. *1 Rol. Abr. 253.*

45. An award that one should have such trees, and that the other should give him security to pay sixteen pounds, is void, because it is not certain what security; and then that part of the award being void, the other part must be void too, for else it would be an advantage to one only. *Cro. Jac. 314.*

46. If an award be that the obligor in a single bond shall pay the money, that had been no award without saying that he should be discharged; for payment without a discharge and acquittance, will not discharge a single bond. *Hob. 40.*

47. An award was made, that one of the parties should be bound with sureties, such as the other should approve, in the sum of one hundred and fifty-eight pounds, to be paid him at such a time; and
that

that they should seal mutual releases: and the court inclined, that the award was void; for if the party did not like the sureties, he was not to seal a release, so it is but an award on one side. *3 Mod. 272.*

48. If one party alone be ordered to do something, and nothing else appears to the court, it shall be presumed, that he alone was the wrong-doer, and the award is good, if it appears that he is by the award discharged of all actions that might be brought against him for that wrong: but when it appears that they design both parties satisfaction for the wrong done each of them, there, if the satisfaction designed one be not well awarded, the whole shall be void for the partiality.

49. A naked award is no good plea in trespass, unless something be awarded to the plaintiff in amends; for if there be no trespass, there is nothing about which an award can be made; and if there be one, and they do not award satisfaction, they do not act according to the design of their institution; for they are not indifferent, and so there is no good award, *1 Rol. Abr. 251.*

50. If trespass be of beasts taken and detained, and they arbitrate that the owner shall have the beasts again, this is void; for it is against natural justice to give him his own again without satisfaction for the unjust taking and detention. *1 Rol. Abr. 251.*

51. An award that one shall go to Rome, or Paul's, not good, because to nobody's advantage. *1 Rol. Abr. 252.*

52. An award that two shall intermarry, no good award for that ought to be at the party's choice; and the bodies of the parties are not submitted to the power of the arbitrators. *1 Rol. Abr. 252.*

53. If the award give satisfaction for slanderous words spoke of a man without a crime, which it appears was pardoned, that award is void; for if the crime be pardoned, no harm could come to him by speaking them, therefore the award unequal. *1 Sid. 178.*

35. If

54. If an award be, that if one will make his law that he did no trespass, that then he shall go quit, not good, for that cannot be pleaded in bar of an action, for it supposes, contrary to the submission, that there was no trespass. Neither can it be averred, that the award was for the same trespass the action was brought for, for it supposes no trespass. *Dyer*, 356.

55. There are controversies between A and B, and A and C, as attorney to B, submit to an award, the arbitrators award so much money to A, and that A and C shall release to each other, to the use of each other, this is void, because the award is on one side; for B cannot take advantage of the release, for that is to the use of C. *Carth.* 412.

56. The award may be beneficial to the party, though a thing is awarded to be done to a stranger to the submission, as the arbitrators award that one of the parties shall pay money to the servant of the other. *3 Leon.* 62.

57. If an award be to pay so much money in discharge of all actions, a release shall be intended to be awarded, unless the contrary be shewn on the other side. *2 Rol. Rep.* 1.

58. An award to pay money to a mere stranger, is said to be void. *1 Rol. Abr.* 247; but see *1 Salk.* 74, where by *Holt* it is good, and shall be intended for their benefit. But an award, that the parties shall in such proportion discharge a debt by bond in which they are jointly bound, is good, though the obligees be no party to the submission. *1 Rol. Abr.* If two brothers submit to arbitration, and one of them is awarded to pay so much to his mother yearly, this is good; for the payment being to be made to his mother, shews it to be a benefit to him.

59. *Fourth rule, See page 35.* If the arbitrators award a thing impossible, *ex natura rei*, it is void; but if they award a thing which cannot be done, but is not, in the nature of the act itself, contradictory

tradictory or repugnant, this may be a good award; for there is no construction to be made of the award, but by the words thereof. *1 Rol. Abr. 248.*

60. If the arbitrators award a sum of money to be paid at a day past, it is void. *8 E. 4. 1 b.* If they award that a man shall make an obligation immediately, this is no good award, for time is required to the making. *18 Ed. IV. 21. But query, and see 2 Brownl. 311, and 1 Salk. 69, that it shall be done in reasonable time.*

61. Awards, that one shall turn the river of Thames, kill, steal, forge a deed, &c. are void. *Co. Lit. 206.*

62. If an award be, that one shall make a feoffment to another of an acre, and immediately after deliver the charters, this is good, because they may be delivered in the same instant. *1 Rol. Abr. 248.*

63. An award that a stranger shall do an act is void, because another, in his natural freedom, is not supposed within my power. *Hard. 46.*

64. An award to levy a fine is good; for though it is an act of the court, yet, by the law and public justice of the kingdom, it is not to be refused to any man: but if the award be to command the justices to do it, this is no good award; for the parties in effect pray leave to agree from the king himself, which is quite different from the nature of a command. *1 Rol. Abr. 249.*

65. An award to pay so much, *apud domum J. S.* good; for he is not bound to pay it in the house, but as near as he can to it, or it shall be intended a common inn; and if the party will not let him pay there, it has been said that the endeavour is sufficient, for they cannot award a thing that will make the party a trespasser. *3 Lev. 153. Cro. Car. 226.*

66. An award that one of the parties should discharge the other of a bond in which both were bound to a stranger, this is a good award; for it shall be intended that the money was to be paid at a day to come;

come; and therefore he might then tender it, and acquit the other; and if the day of payment be past, he may pay the penalty, and compel the other to give a release in a court of equity. *Cro. Car.* 551.

67. An award that one of the parties shall discharge the other from his undertaking to pay a debt to a third person, a good award; for by the award he is set in the place of the other person, and the creditor, upon payment, is compellable in equity to give a release. *1 Mod.* 9.

68. An award, the tenth day of the term, to stay the suit, and judgment given in the action that term, in an action for non-performance, and *non assumpsit* pleaded, it was moved in arrest, that every judgment given was as the first day of the term, and so the award to stay the suit then was altogether impossible: but it was held, that though this might have been a good objection upon a special demurrer, where it is shewn for cause, yet now the court must give judgment on this record only, and it doth not appear on this record when judgment was given to the other. *Yelv.* 35.

69. If A and B submit to the award of J. S. and he awards that A shall pay to B thirty pounds within two months next following, and that, upon payment thereof, they shall give mutual releases to one another, and in the said two months B dies, the money shall be paid to his executor, who thereupon must release; for the award creates a duty. *2 Vent.* 249.

70. *Fifth rule.* See page 35. An award may be good for part only, but then it must be final as to that part. *19 H. 6.* 36.

71. An award that all suits shall cease, is a final award; so an award that one of the parties shall not sue an obligation, for this amounts to an extinguishment of the debt. An award that a suit in Chancery shall be dismissed, a final award; so if the arbitrators award a *retraxit*, an award that one shall not prosecute

secute nor proceed in such a term, seems to be good; but an award that one of the partners shall be nonsuit is not good, because the party may begin again, so that each party shall discontinue their actions which they have against each other; for this is not a final determination. *Bac. Abr. Tit. Award. p. 147.*

71. A conditional award not good, because not final to determine matters in difference; the same law where any thing is referred to the arbitrators future judgment or exposition. *1 Sid. 59.*

72. If the arbitrators award general releases within four days after the award; and if in ten days after the releases so made the party dislike the award, upon payment of ten shillings the award shall be discharged, here the award is good; and the proviso to make good the award after such releases is altogether void and repugnant; for if the obligation be once forfeited by non-performance of the award, it can never be discharged by the award itself; but if the arbitrators award general releases within four days after the award; and if ten days after the award made the parties dislike the award, &c. the award shall be void, this award is not good, because not final and decisive, for the parties may dislike the award within the four days. *Poph. 15, 16.*

73. If the arbitrators award that A shall beg B's pardon in such manner and such place as B shall appoint; as to this part the award is void: for the arbitrators ought to have made a final determination of the matter themselves, and not to have left the manner and place of begging pardon, which in this kind of satisfaction makes the most considerable part, to the judgment of B. *1 Sal. 71.*

74. When the arbitrators award a thing not submitted, with a reservation to themselves of a future power of judging of the matter, and they award a thing within the submission, this is good for the thing within the submission; for as to that, it is final, and void for the residue. *Palm. 146.*

75. If

75. If they arbitrate that all controversies shall cease, except that concerning one bond, this is final; for as to the bond they arbitrate, it shall continue in force. *Cro. Jac. 277.*

Sect. 6. *Of the construction, effect, and execution of the Award.*

1. AN award, as has been said, is to receive a liberal construction, and to be governed by the intent of the arbitrators, where no inconvenience will ensue; therefore, if the arbitrators award a thing to be done, without saying within what time, the party shall have reasonable time, because they must intend all things necessary to the doing the thing they award. *1 Salk. 69.*

2. If the award be to pay money to J. S. if he dies the money shall be paid to his executors. A submission of all actions, and an award of a release of all actions, except a bond, this is an award that the bond shall stand. *Cro. Jac. 277.*

3. An award that one shall enjoy such a house and pay the rent, or else the award for enjoying the house to be void, is a good award; for that award is absolute, unless upon his own fault; and the thing is reserved to the future judgment of the arbitrators. *Cro. Jac. 423.*

4. If a battery be submitted, and the award is, that one shall release, and the other pay him ten pounds, the release must be understood of the battery, and must be first performed before the ten pounds shall be paid. *3 Bulst. 111, 117.*

5. If an award be, that one shall make a lease to the other, rendering rent, the lease is made, but the rent not paid, the obligation is not forfeited; for the award did not reach the payment of the rent, which must be recovered by distress or action of debt: but if the award had been, that he should pay

the rents at such set times, the obligation would have been forfeited if they had not been paid; and in such case it is a sum in gross, and payable without demand, for the party must offer it to save his obligation, *Cro. Eliz.* 211.

6. It is an established rule, that an award may be good in part, though void as to other parts of it; and that the party is obliged to perform that which is well awarded, and excused, as to that only which is void; but if an award is good as to one party, and void as to what is awarded to the other party, the award is void in the whole. 8 *Co.* 98.

7. If the arbitrators award one thing in the one part, and the time expires before they award any thing on the other part, this is altogether void, and contrary to their authority, because it doth not finally determine the things contained in the submission equally on both parts. 36 *H. VI.* 12.

8. If it be provided by the submission, that the award should be notified or delivered to the persons in writing, it is no award till notified or delivered, because it is not according to the power in the submission. 1 *Vent.* 193.

9. If several persons of the one part, and several of the other part, submit themselves to arbitrament, provided the arbitrator deliver the award to the parties, or one of them, he is not obliged to deliver the award to one of each party; but it is sufficient to deliver it to any of the said parties.

10. But if two on the one part, and one of the other, submit to an award, *ita quod arbitritium fiat & deliberetur utrique partium prædictæ*; the delivery of the award to one on the one part, and to the other of the other part, is not sufficient; for each party is each entire party; for each, by non-performance, incurs the penalty, and each provides, in order to his performance, that it should be made known to him. If the submission be by two, so that it be delivered to either party: that is to be understood, to both; and
a de-

a delivery to one only is not good. *Cro. Eliz.* 885.

11. If two men submit to an award, so that it be *paratum deliberari partibus* such a day, it need not be averred that it is *paratum delibarari*, &c. at a day; for the publication of the award itself is sufficient. *Hard.* 399.

12. If the submission be general, that the award shall be delivered before such a day, it may as well be delivered by word as by deed; and therefore *non deliberavit in scriptis*, in such case, no good plea. 84. Debt upon an award by word only, is within the statute of 21 Jac. I. *cap.* 16, of limitations, and must be sued within six years, otherwise it is of an award by specialty. 2 *Keb.* 462.

13. If there be an obligation to stand to an award, each ought to perform it on his own part, at the peril of his obligation. 21 *H. VII.* 28 b.

14. If money be awarded, and not paid, the party may either have his first action or action of debt; for if there be payment, the first wrong was determined; but otherwise he cannot plead the award as a determination and bar of the wrong; for since the award of arbitrators doth not bind any man's property, as judgments at law do, it is fit the party when he pleads in bar, should shew an execution at the time appointed. 1 *Rol. Abr.* 267.

15. As to the performance of the award, if there be no time limited, it is to be performed in a convenient time. 20 *Ed. IV.* 8.

16. Though an award cannot be made part at one time and part at another, yet it may be performed part at one time and part at another; for the nature of the thing may require performance at different times and places. 8 *Ed. IV.* 10.

17. An award for one party to deliver a release or bond to the other, if that one party delivers it to A, who delivers it to B, who tenders it to the other

party, who refuses ; this is a good performance of the award. 2 Leon. 110, 181.

18. If the submission be of a chancery suit, and the arbitrators award that the suit shall stay, and that one be quit against the other for all matters in the bill ; it is sufficient performance to say that the other *stetit quietus*, and though he did not pronounce an actual discharge : but where one by deed is obliged to acquit another of such a debt, or such a suit, it is not sufficient to save him harmless, but he must procure an actual discharge ; but the award here being *quod staret quietus*, means no more than that the party should be acquitted by force of the award itself, and not that another discharge should be procured : and in this case, if a new bill be exhibited, yet that is no disturbance to forfeit, without process issuing out as the *sub-pœna* ; for till process the party is not actually molested. 1 Rep. 7, 8.

19. In debt on an obligation for performing an award, by which award the parties were to give mutual releases, the defendant pleaded that he made a release to the plaintiff, and delivered it to J. S. for his use ; and this was held a good performance of the award ; for the defendant could not plead *non est factum*, neither could he countermand it ; and as the arbitrators had not appointed any place where the releases should be delivered, if the plaintiff should absent himself, it would be very inconvenient. Cro. Eliz. 54.

20. But if a man submits a rent-charge to arbitration, and the arbitrator award *quod staret quietus* of the rent ; he who hath the rent ought to release the same to the other, in performance of this award ; for to be quit of the rent, supposes the demand not in being. 2 Bulst. 96.

21. An award that the plaintiff shall not prosecute or proceed in a suit the same term, the entry of a continuance is no breach of this award, for otherwise

wife the party can never go on in the action. *Cro. Jac.* 525.

22. An award is made to infeoff J. S. J. S. comes and desires the party to infeoff J. M. and him to the use of himself. This is a good performance of the award: for though the construction of the sense of the award is to be taken on the express words, yet what is a performance of the award, is to be taken according to the intent of the arbitrators. 3 *Bulst.* 65.

Sect. 7. *Of the action on, and Pleadings in, Awards.*

1. If the arbitrators award money to be paid at a day to come, this is a good plea in bar in an action of trespass before the day, because it is *debitum in presenti* though *solvendum in futuro*; and if he might have an action of trespass before the day, and recover; he may have an action of debt after the day; and so a double satisfaction for the same thing. 1 *Rol. Abr.* 267.

2. There is a difference between an accord with satisfaction, and an award; for in an accord a man must plead present satisfaction, and it is no plea in bar to plead an accord with satisfaction at a day to come; for in all personal injuries, the law gives damages as an equivalent; and when the party accepts of an equivalent, there is no injury or cause of complaint; and therefore a present satisfaction is a good plea: but where the wrong-doer promises a future satisfaction, the injury continues till satisfaction is made; and consequently there is a cause of complaint in being: and if the trespass were now barred by this plea, he can have no remedy for the future satisfaction; for that supposes the injury still to have continuance: but where persons submit to arbitration, the arbitrators are judges of the injury: and if they award money payable at a day to come, that is a

good award, and may be a good plea in bar to an action of trespass brought in the mean time; because this thereby becomes the immediate debt, attainable by law. *Plowd. 5. b. 5 E. 4. 7.*

3. It was formerly held, that an award of a release, a horse, a quart of wine, to enter into an obligation, or any other collateral matter in satisfaction, without performance, was no good plea in bar; for were it a good plea in bar, he could have no remedy afterwards to compel the party to do the thing awarded; for by the bar the trespass would be nullified. *1 Roll. Abr. 266.*

4. But it has been since held, in an action on the case upon a promise made by the defendant, to deliver a parcel of hops to the plaintiff on such a day and place, on a certain price agreed on, &c. to which the defendant pleaded in bar, that after the promise made, both he and the plaintiff referred all matters; and that the arbitrators awarded, that the defendant should release the plaintiff, and that he should release the defendant of all actions and demands whatsoever; and alledged, that from the time of the award hitherto, he was always ready, and yet is, to release the plaintiff according to the award. &c. And upon demurrer to this plea, after several debates, it was adjudged, that this award was no bar to the action, because nothing was awarded, but on'y mutual releases from each other, so that the award itself is no bar; but the thing awarded, when executed, would be a bar; and a difference was taken where any thing is awarded in satisfaction, there the award itself is a bar before it is performed: but where nothing is awarded but releases on both sides, there, when the award is executed, the release will likewise be a bar; and the court willed, that the defendant may bring his action against the plaintiff for not releasing according to the award; and therein ought to recover all his damages and costs in the action against him. *Cartb. 378.*

5. The

5. The above cases must be understood where the action was brought before the time for performing the award was expired: for if an award be to pay money at a day to come, and the money be not paid at the day; and afterwards an action of trespass be brought; this is no good plea in bar: for no man can plead this in bar without shewing he has paid the money: for it is against natural justice to make one default and wrong, an excuse for another. But if the party tender it at a day, and the other refuse it, then it is a good plea in bar, it being his own fault; and he hath still a remedy for the money. *1 Rol. Abr. 267.*

6. If in an action of debt upon an award, the plaintiff declares that the arbitrators did make an award, that the defendant should pay unto the plaintiff ten pounds; this is a good declaration, though nothing is shewn to have been awarded on the other side; for it is sufficient for the plaintiff to set forth that part of the award which entitles him to his action; and if the defendant will impeach the award for any thing, he must shew it specially on his own part. *1 Leon. 72.*

7. In an action of debt upon a bond conditioned for the performance of an award, the defendant pleaded that the arbitrators did make an award that the defendant should pay to the plaintiff three thousand one hundred pounds, and should give to the plaintiff a general release; and pleaded, that he had paid the money, and given a release accordingly; but did not shew what, on the part of the plaintiff was awarded to be done: and the plaintiff replied, without shewing the other part of the award in his replication; and took issue, that the defendant had not paid the money: and the defendant put in an insufficient rejoinder, upon which the plaintiff demurred: and, *per Cur.* the plaintiff cannot have judgment, because the award, as set forth and agreed in pleading, is void: but if

the plaintiff would have helped himself, he ought to have shewn the other part of the award before he had taken issue. 1 Saund. 326.

8. If in debt upon an obligation conditioned for the performance of an award, the defendant pleads *nullum fecerunt arbitrium*; and the plaintiff replies, and shews the award, he must also shew the breach, without which he hath no cause of action, for the obligation is guided by the condition; and though the defendant can make no answer to the breach, yet it ought to appear to the court, that the plaintiff hath cause of action. Yelv. 152. Cro. Jac. 220.

9. But if in debt upon bond to perform an award, and oyer of the condition, the defendant pleads *non submitit*, the plaintiff need not assign a breach, for the defendant puts the whole streis of his cause upon a matter antecedent to the alledging a breach; for if there be no submission there could be no award, and consequently no breach of it, 1 Sid. 290.

10. If in debt upon an obligation conditioned for the performance of an award, the defendant shews that the arbitrators did make an award, that the defendant before such a day should pay to the plaintiff one hundred pounds, or otherwise should procure one A, being a stranger, to be bound to the plaintiff for the payment of twelve pounds *per annum* to the plaintiff for his life; and the defendant pleads that he hath performed the said award, and the plaintiff replies, that the defendant hath not paid the said hundred pounds, without saying, nor hath procured A, &c. yet this is a good replication, for the award as to that part is merely void, and therefore the plaintiff need not take notice thereof. 1 Leon. 304.

11. In an action of debt upon an award, it is not necessary for the plaintiff, in his declaration, to say time or place where the award or submission were made; but if the defendant denies either, the plaintiff

plaintiff may reply, that the award or submission was made at such a place. 2 *Brownl.* 137.

12. If there be a submission to the award of J. S. so that the said award be made under his hand and seal at or before the fifth day of September following, ready to be delivered at the shop of J. N. in the Exchange, London, and in an action of debt upon an award made thereupon, the plaintiff declares, that the said J. S. under his hand and seal the fourth day of September following, *apud Castrum Eborum*, did make an award *ad tunc & ibidem parat.* to be delivered at the shop of the said J. N. in the Exchange, London. This is no good declaration, for the parties are not bound to take cognizance of the delivery elsewhere than at the place appointed. *Cro. Jac.* 577.

13. If in debt upon an obligation conditioned for the performance of an award, so as, &c. the defendant pleads no award made, and the plaintiff replies, that *ante exhibitionem billæ, scilicet*, the twenty-fourth of June (which was a day within the submission) the arbitrators made an award, &c. and the defendant demurs generally, the plaintiff shall have judgment; for though the plaintiff ought to have replied, that the arbitrators made their award before the day limited, to them; yet this is form only, and helped by a general demurrer. 1 *Sid.* 370.

14. If in debt upon a bond conditioned for the performance of an award, so as it be made, &c. and ready to be delivered to the parties or to such of them who shall desire the same; the defendant pleads *nullum fecerunt arbitrium*, and the plaintiff replies and sets forth the award, and shews a breach, but doth not say that it was ready to be delivered to the defendant, yet this is a good replication; for when the award is made it is ready to be delivered to the parties, or to such of them who desire it, so that it must be desired; and if denied, the party may plead that matter specially, 3 *Mod.* 350.

15. If

15. If in debt upon an obligation conditioned for the performance of an award in writing, or by word of mouth, the defendant pleads no award made, and the plaintiff replies, that at the time of the bond and award he had an action against the defendant, for scandalous words, and that the arbitrator *ore tenus* did declare and publish his award in manner following, *viz.* That the defendant should pay to the plaintiff twelve guineas, and all such money as he had expended *circa prosecutionem placit, præd. &c.* this is a good award, and well set forth, although the award doth not mention any suit before; for he that sets forth a parol award is not tied to the very words, but it is sufficient to shew the effect and substance of what was awarded by word of mouth. 2 Vent. 242.

16. A man cannot plead generally the award performed, but he ought to set forth the award, and shew how he hath performed it. Moor 3, pl. 9.

17. But if an award be to pay the rent mentioned in such an indenture, the defendant, in pleading performance, need not set forth the indenture, but refer generally to it. 1 Vent. 87. But if it be to be paid in such manner, and at such times as is expressed in the indenture, then it must be set forth at large. 1 Vent, 87. So if an award be to pay money given by will. 1 Vent. 87.

18. In pleading a countermand to a submission to arbitration, it need not be alledged that the party gave notice to the arbitrators; for without that it is no countermand: and therefore, if no notice be given, issue may be joined upon the point *quod non revocavit.* 8 Co. 92.

19. If the submission be by word, though the award be by deed, the party may wage his law; for though a deed cannot be dissolved without deed, yet a verbal contract may be dissolved by word only, and this in its original is a verbal contract.

20. If

20. If in debt on a bond for performance of an award, the defendants plead no award, and the plaintiff sets forth an award with a *profert in cur.* and the defendant craves oyer, and then demurs for variance between the award set out in the replication and the oyer, and the variances appear material, the defendant must have judgment; otherwise if the variance had been as to those parts in which the award was void; and though in debt on an award the plaintiff need not set forth more than makes for him; yet it is otherwise in debt on a bond; for there the plaintiff must reply the whole award; and if such replication be without a *profert*, the defendant may reply *nul tiel agard*. 1 Salk. 72.

21. If an award be made, that certain buildings erected on a wharf, which were a nuisance to the plaintiff, should be pulled down within thirty-eight days from the date of the award, &c, and upon *nul. agard* pleaded, the plaintiff sets forth an award, but without date; yet this is well enough, for the date shall be computed from the making the award, as a deed takes its date from the delivery, though actually dated on another day. 1 Salk. 76.

Form of a Submission by Rule of Court.

WHEREAS divers disputes and controversies have arisen, and are now depending, between—
 of ----- in the county of ----- of the one part,
 and ----- of ----- in the said county, of the other
 part, touching and concerning ----- Now, for
 the ending and deciding thereof, it is hereby mutually
 agreed by and between the said parties, that
 all matters in difference between them for, touching,
 and concerning all and every the matters
 and things herein before particularly mentioned,
 shall be referred and submitted to the arbitrament,
 final end, and determination of -----, in the said
 county

county ----- of -----, in the said county -----, and ----- of -----, in the said county -----, or any two of them, arbitrators indifferently elected by the said parties; so as the said arbitrators, or any two of them, do make and publish their award in writing ready to be delivered to the said parties, or such of them as shall desire the same, on or before the ----- day of -----, next ensuing the date hereof. And it is hereby mutually agreed by and between the said parties, that this submission shall be made a rule of his majesty's court of ----- at Westminster. In witness whereof the said parties to these presents have hereunto set their hands this ----- day of -----, in the ----- year of the reign of our sovereign lord George the third, &c.

An Arbitration Bond.

KNOW all men by these presents, that I, -----, of -----, in the county of -----, am held and firmly bound unto -----, of -----, in the said county of -----, in ----- pounds of good and lawful money of Great Britain, to be paid to the said -----, or to his certain attorney, his executors, administrators, or assigns. To which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, and dated the ----- day of -----, in the ----- year of the reign of our sovereign lord George the third, of Great Britain, France, and Ireland, king, defender of the faith, and so forth; and in the year of our LORD -----.

The condition of the above obligation is such, that, if the above bound -----, his heirs, executors, and administrators, and every of them, for and on his and their parts and behalfs, do, and shall well and truly stand to, obey, abide, perform, observe and keep the award, order, arbitrament, final end and determina-

determination of ----, of ----, and ---- of ----, arbitrators indifferently named, elected, and chosen, as well for, and on the part and behalf of the above bound -----, as of the above named -----, to arbitrate, award, order, adjudge, and determine of, and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, judgments, executions, extents, accounts, debts, dues, sum and sums of money, quarrels, controversies, trespasses, damages and demands whatsoever, both in law and equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, committed, omitted, done or suffered, by or between the said parties, so as the said award be made in writing, and ready to be delivered to the said parties, on or before the ---- day of ----, now next ensuing; then this obligation to be void, otherwise of force.

If the parties have a mind to make their submission a rule of court, this may be added at the end of the condition :

And the above bound ---- doth agree, and desire, that this his submission be made a rule of his majesty's court of ---- at Westminster, pursuant to the act of parliament in such case made and provided.

Condition to stand to the Award of three Arbitrators, or any two of them, and an Umpire to be appointed.

THE condition of this obligation is such, that if the above bound ----, his heirs, executors, and administrators, for and on his and their parts and behalfs, shall and do well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, final end, and determination of ----, or any two of them, arbitrators indifferently elected

electd and named, as well by and on the part and behalf of the said ----, as by and on the part and behalf of the above named ----, to arbitrate, award, order, judge and determine, of and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said parties; so as the award of the said arbitrators, or any two of them, be made and set down in writing, under their, or two of their hands and seals, ready to be delivered to the said parties in difference, on or before the --- day of ----, now next ensuing: then this obligation to be void, otherwise of force.

And if the said arbitrators shall not make such their award of and concerning the premisses, within the time limited as aforesaid, then, if the said ----, his heirs, executors, and administrators, for and on his and their part and behalf, do and shall well and truly stand to, observe, perform, fulfil, and keep the award, determination, [and umpirage of ----, (*if the umpire be named*) being a person indifferently named and chosen between the said parties, for umpire; (*but if not named*) of such person as the said arbitrators shall indifferently choose for umpire in and concerning the premisses; so as the said umpire do make and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties in difference; on or before the ---- day of ----, now next ensuing: then this obligation to be void, otherwise of force.

And the above bound ----, doth agree and desire, that this his submission be made a rule of his majesty's court of ----, at Westminster, pursuant to the act of parliament in such case made.

Form of an Award.

TO all people to whom these presents shall come, we ---, of ---, and ---, of ---, do send greeting. Whereas there are several accounts depending, and divers controversies have arisen, between ---, of ---, of the one part; and ---, of ---, of the other part: and whereas, for putting an end to the said differences, they, the said ---, and ---, by their several bonds or obligations, bearing date ---, last past, are reciprocally become bound to each other, in the penal sum of ---, to stand to, abide, perform, and keep the award, order, and final determination of us the said ---, so as the said award be made in writing, and ready to be delivered to the parties in difference on or before --- next ensuing, as by the said obligations and conditions thereof may appear. Now know ye, that we, the said arbitrators, whose names are hereunto subscribed, and seals affixed, taking upon us the burthen of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, do make and publish this our award between the said parties in manner following; that is to say, first, we do award and order, that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, and depending between the said parties in law or equity, for any manner of cause whatsoever touching the said premisses, to the day of the date hereof, shall cease and be no farther prosecuted; and that each of the said parties shall pay and bear his own costs and charges in any wise relating to, or concerning the premisses. And we do also award and order, that the said --- shall deliver, or cause to be delivered, to the said ---, within the space of ---, &c. And further, we do hereby award and order, that the said --- shall, on or before ---, pay, or cause to be paid, unto the said ---, the sum of ---, &c. And lastly, we do award and order, that the
said

saïd ----, and ----, on payment of the saïd sum of ----, shall, in due form of law, execute each to the other of them, or to the other's use, general releases, sufficient in the law for the releasing by each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premisses aforesaid, or any matter or thing thereunto relating, from the beginning of the world until the ----day of ----, last past. [*The day of the date of the arbitration bonds.*] In witness whereof, we have hereunto set our hands and seals the ---- day of ----.

Form of an Umpirage.

[*Recite the arbitration bonds as before.*]

NOW know ye, that I, -----, umpire, indifferently chosen by -----, having deliberately heard and understood the complaints, and allegations, and proofs of both the saïd parties, and willing, as much as in me lieth, to set the saïd parties at unity and good accord, do by these presents arbitrate, award, order, decree, and judge as followeth; that is to say, &c. &c.



Bills of Exchange.

1. *Of the Origin and Use of Exchange.*

THE exchange of money is of great antiquity, as appears as well from Mol. B. 2. c. 19, Sect. 1. the *Hebrew* customs, as those of the *Romans*.

Upon the first day of the month *Adar* (i. e. *February*) proclamation was made throughout all *Israel*, that the people should provide their half *shekels* (value about two shillings and sixpence sterling) which were yearly paid towards the service of the temple, according to the commandment of God. On the 25th of *Adar* they brought tables into the temple, that is, into the outward court where the people stood. Exod. xxx. 31. On these lay the lesser coins, which were to furnish those who wanted half-shekels for their offerings, or who wanted less pieces of money in their payment for oxen, sheep, doves, &c. which stood there ready in the same court to be sold for sacrifices : but this supply and furnishing the people from these tables was not without an exchange for other money, or other things in lieu of money, and that at an advantage. Hence also those who sat at the tables were called bankers, or masters of the exchange.

2. By the *Romans* it is supposed to have Ibid. Sect. 2. been in use upwards of two thousand years, money being then elected out of the best of metals to avoid the tedious carriage of merchandizes from one country to another. So
F other

Bills of Exchange.

other nations, imitating the *Jews* and *Romans*, erected mints, and coined monies, upon which the exchange by bills was devised, not only to avoid the danger of the adventure of monies, but also its troublesome and tedious carriages.

Ibid. Sect. 3.

3. Thus kingdoms and countries having, by their sovereign authorities, coined monies, caused them to appoint a certain exchange for permutation of the various coins of several countries, without transportation of the coin, but giving *par pro pari*, or *value for value*, with a certain allowance to be made those exchangers for accommodating the merchants.

Ibid. Sect. 4.

4. As commerce became various, so exchange numerous, but generally reduced to four; *Cambio commune*, *Cambio real*, *Cambio fidei*, and *Cambio fictitio*.

5. *Cambio commune*, (or common exchange) in *England*, was those that were constituted by the several kings, who, having received monies in *England*, would remit by exchange the like sum to be paid in another kingdom; *Edward* the third, to ascertain the exchange, caused tables to be set up in most of the general marts or ports of *England*, declaring the value of the foreign coins of those countries with which his subjects carried on commerce, and what allowances were to be made for having monies to be remitted to such countries or kingdoms.

Ibid. Sect. 5.
See 13 Ed. III.
c. 1.

6. *Cambio real*, (or real exchange) was when monies were paid to the exchanger, and bills were drawn, without naming the specie, but according to the value of the several coins, which two officers were afterwards incorporated, and indeed was no more but upon payment of monies here in *England*, to be repaid the just value in money in another country, according

according to the price agreed on between the officer and deliverer, to allow or pay for the exchange of the money and the loss of time.

7. *Cambio ficci*, (or dry exchange) is, when a merchant hath occasion for five hundred pounds, suppose for a certain time, and would willingly pay interest for the same, the banker being desirous to take more than legal interest, and yet to avoid the statute, offers five hundred pounds by exchange for *Cales*, whereunto the merchant agrees; but the merchant having no correspondence there, the banker desires him to draw his bill to be paid at double or treble usance at *Cales*, by *Robin Hood* or *John a Nokes*, (any feigned person) at the price of exchange then current. Accordingly the merchant makes the bill, and the banker pays the monies, which bill the banker remits to some friend of his, to procure a protest from *Cales* for non-acceptance, with the exchange of the money from *Cales* to *London*; all which, with costs, the merchant is to repay to the banker. Sometimes they are so conscientious as not to make above thirty *per cent*.

Ibid. Sect. 6.

Usury first introduced here by the Jews. See 2 Inst. fo. 506.

8. *Cambio fictitio*, (or fictitious exchange) is, when a merchant hath occasion for goods to freight out his ship, but cannot well spare the money. The owner of the goods intimates, that he must have ready money. The buyer knowing his drift, it is agreed, that the seller shall take up the monies by exchange for *Venice*, or any other parts; but then the merchant must pay for exchange and re-exchange.

Ibid. Sect. 7.

9. So likewise where the merchant is become indebted to the banker, they are contented to stay, the merchant paying exchange or re-exchange, the which he will most certainly compel him to do.

3 and 4 Hen. VII.

10. These two last ways of grinding the few of the generous merchants, were afterwards prohibited; but notwithstanding it was found impossible to moderate the inequality of exchanges, and to have value for value; so that at this day it seems to be a cold that many an honest man is apt to catch.

Ibid. Sect. 8.

11. The just and true exchange for monies, that is at this day used in *England* (by bills) is *par pro pari*, according to value for value, which is grounded on the weight and fineness of monies, according to their several standards, proportionable to their valuation, which being truly and justly made, ascertains and reduces the price of exchange of money to any nation or country whatsoever.

12. That the course of exchange is the criterion of the balance of trade, has been allowed, not only by great statesmen and speculative politicians, but by the most skilful and sagacious practical traders.

13. As this matter is put in a very rational and familiar light by those able and distinguished merchants of the city of *London*, who were instrumental, in conjunction with the late ever memorable earls of *Halifax* and *Stanhope*, in defeating the *French* treaty of commerce in the year 1712,; I shall quote their reasoning upon this point from the *British Merchant*, in consequence of which, the practical application of what we shall communicate on the topic under consideration, will appear the more intelligible.

14. "Suppose, say they, the tenant in *Wiltshire* is to pay for rent one hundred pounds to his landlord in *London*, and the woollen-draper in *London* is to pay the like sum to his clothier in *Wiltshire*; both these debts may be paid without transmitting one farthing from one place

place to another by bills of exchange, or by exchanging one debtor for the other, thus ; that is, the tenant may receive the landlord's order to pay an hundred pounds to the clothier in the country ; and the woollen-draper may receive his clothier's order to pay the like sum to the landlord in town."

15. " These two orders are properly called bills of exchange ; the debts are exchanged by them ; that is, the woollen-draper in town, instead of the tenant in the country, is become debtor to the landlord, and the tenant in the country, instead of the woollen-draper in town, is become debtor to the clothier ; and when these orders are complied with, the two debts between *London* and the country are discharged without sending one shilling in *specie* from the one to the other. In like manner the warehouse-man in *London* is indebted in one hundred pounds for stuff to the weaver in *Norwich*, and the linnen-draper in *Norwich* is indebted in the like sum to the *Hamburgh* merchant in *London*. Both these debts may be paid by bills of exchange, or by the exchange of one debtor for the other, by placing one debtor in the other's stead ; that is, the warehouse-man may receive the order of his weaver to pay one hundred pounds to the *Hamburgh* merchant ; and the linnen-draper may receive the order of the *Hamburgh* merchant to pay the like sum to the weaver. These orders are bills of exchange. The debtor in one place is charged for the debtor in the other ; and thus both debts may be paid without sending one single shilling in *specie* from the one city to the other. But if the debts due from both places are not equal, then only the same quantity of debts on both sides can be paid by bills of exchange ; the

Bills of Exchange.

balance must be sent in money from the city from whence the greatest sums were due. For example: ”

16. “ If, by the trade between *London* and *Norwich*, the former owes ten thousand pounds to the latter, and the latter no more than nine thousand pounds to the former, it is manifest, that only the debts of nine thousand pounds on each side can be discharged by bills of exchange; the balance of one thousand pounds must be sent either from *London*, or some other place indebted to *London*, to make even the account between both cities.”

17. Let us suppose then, that to send and insure a thousand pounds in specie to *Norwich*, would cost five pounds, or ten shillings *per cent.* which of the debtors in *London* would be willing to be at this charge? It is rational to believe, that every one will shift it off from himself; that every one will endeavour to pay his money by a bill of exchange; it is natural to believe, that every one, rather than stand the cost and hazard of sending an hundred pounds in specie, would pay one hundred pounds, five shillings in *London* for a debtor in *Norwich*, upon condition that the *Norwich* debtor should pay one hundred pounds for him in that city.”

18. “ By which means the *Norwich* debtor would pay his debt of one hundred pounds in *London* with less than that sum, while the *London* debtor would be obliged to give more than that sum for the payment of one hundred pounds in *Norwich*; and if such for years together were the course of exchange between *London* and *Norwich*, there could be no question to which of the two cities a sum must be sent in specie to pay the balance; that city undoubtedly pays the balance that gives more than

than the *par*. That undoubtedly receives the balance, that gives less than the *par* for bills of exchange; the course of exchange in this case would sufficiently decide, that the balance of trade is on the side of that city that procures bills of exchange on the most easy terms. I have taken examples from two *English* cities, where the money is of the same denomination, and the same quantities are equally at *par* in both. But the case is the very same between two cities where the denominations of the money are different, as long as any certain quantity of money in the one can be reduced to a *par* of equality with any certain quantity of money in the other."

2. *What a Bill of Exchange is, and of the Form and Words necessary to be used therein.*

1. A bill of exchange is a piece of paper, commonly long and narrow, on which is wrote a short order given by a banker, merchant, trader, or other person, for paying to such a person, or his order, or also, in some countries, to the bearer in a distant place, a sum of money equivalent to that which such a banker, merchant, or trader has received in his dwelling place.

What a bill of exchange is, Postlethw. Dict. of Tr. and Com. 253.

2. As the custom of the merchants hath established these bills and notes, so hath it prescribed their form, and required that the same should be in writing, and drawn by the party, or those having legal authority from him; and such drawing raises a contract to pay the same, without any express promise. *Starky v. Cheesman*.

Must be in writing. Salk. 128. Carth. 510.

3. As to the form of the bill, it is said, that the same strictness and nicety are not required

Of the form thereof. 10 Mod. 237.

Bills of Exchange.

quired in penning of bills current between merchant and merchant, as in deeds, wills, &c. on the other hand, it may happen that a writing may have the form of a bill of exchange, and yet be otherwise.

No precise words necessary. 2 Ld. Raym. 1397.

Nor value received. Fortesc. 282.

Barnard, K. B. 88.

How far they extend, and to whom. 2 Lutw. 1585.

12 Mod. 380.

Payable to one or order, good. 3 Salk. 67.

Salk. 130. See 6 Mod. 29.

Payable out of a particular fund, not good. 8 Mod. 265. Stra. 591. 2 Lord Raym. 1361. See 2 Ld. Raym. 1482.

There are no precise words necessary to be used in a bill of exchange, but that *deliver such a sum of money*, makes a good one.

4. There is no occasion for the words *value received* to be in the bill itself.

5. Bills of exchange at first extended only to merchant strangers, trading with *English* merchants, and afterwards to inland bills between merchants trading the one with the other here in *England*, and afterwards to all traders and negociators, and of late times to all persons trafficking or not. *Bromwick v. Lloyd*.

6. I promise to pay the bearer twenty pounds on demand, *Holt*, chief justice, seemed to think that this was not a bill of exchange. *Carter v. Palmer*.

7. A bill drawn payable to W. R. or order, was ruled to be within the custom of merchants, and such bill may be negociated and assigned by custom, and the contract of the parties, and an action may be grounded on it tho' it is no specialty. *Jordan v. Barlow*.

Pay to me, or my order, so much, is a bill of exchange, without the intervention of a third person. *Butler v. Crisps*.

8. A bill drawn on a cashier of a certain company, and for him to pay out of the cash of such a company, is not a bill of exchange, and suable as such; for a bill of exchange is not payable out of a particular fund, and so a judgment in C. B. was reversed. *Jenny v. Heale*,

9. A bill drawn upon B, requiring to pay C seven pounds every month out of the growing subsistence of the drawer, and place it to his account, was resolved to be no bill of exchange, and so a judgment in C. B. was reversed. *Josselyn v. Lacier*.

Nor one payable out of the drawer's subsistence. 10 Mod. 294, 316. Fortesc. 281. See 2 Ld. Raym. 1362. 1481. 1482. Stra. 24, 219. 2 Stra. 762.

10. Where it was to pay C. S. or order, nine pounds ten shillings, as my quarter's half-pay by advance from such a day to such a day following, was adjudged in C. B. a good bill of exchange, and judgment affirmed in B. R. *Mackleod v. Snee et al.*

But one payable out of the drawer's half-yearly pay by advance is good. 2 Lord Raym. 1481. Barnard, K. B. 12. 2 Stra. 762.

11. Where it was to pay out of the fifth payment, when it shall become due, and promised that it should be allowed, it was adjudged, that an action was not maintainable upon this bill, as a bill of exchange. *Haydock v. Lynch*.

But not one payable out of the fifth payment when due. 2 Ld. Raym. 1563.

12. In case for money had and received to the plaintiff's use, the defendant pleaded *non assumpsit*, and gave notice to set off the following bill of exchange, directed to J. S.

An authority to receive money to drawer's use, no bill of exchange. 4 Vin. Abr. 241. p. 20.

"Sir, at six weeks after date pay to Benjamin Wheatley, Esq. or order, eight guineas, for your humble servant,
John Pierce.
London, August 24, 1736."

At the trial it was objected, and agreed by the court, first, that this was not a bill of exchange within the custom of merchants, nor could be taken advantage of as such, either by way of set-off, or by an action brought upon it; nor would it be any sort of evidence of money lent, there being no consideration either appearing on the note, or offered to be proved; and it is no more than a bare power or authority to receive so much for the plaintiff's use. Secondly, that if it had amounted to a bill of exchange, yet the laches of the defendant, in not demanding the money, and giving

giving notice in case of non-payment for so long a time, would effectually discharge the plaintiff; and accordingly the plaintiff had a verdict in C. B. *Pierce v. Wheatley*.

Nor one not payable to order.
2 Stra. 1211.

13. The plaintiff declared upon the custom of merchants against the defendants, as acceptors of a bill of exchange; and the instrument run in these words:

Messrs. Gilly and Co.

4th Feb. 1741.

Pray pay Mr. *Richard Banbury*, one month after date, two hundred pounds, on account of freight of the *Veale Galley*, *Edward Champion*, and this order shall be your sufficient discharge for the same.

J. Gibson.

And one of the objections made by the defendants was, That this was not a bill of exchange, for it is not payable to order, so as to be negotiable, it is not said to be for value received. And it is only an order upon a particular fund, like the case of *Jenny v. Herle*, and several merchants proved, that they did not look upon it to be a bill of exchange, and others were of a contrary opinion.

14. The chief justice ruled it not to be a bill of exchange. He said it was not in the power of the parties to make what form they please pass for such a bill; it ought to be agreeable to the *lex mercatoria*. The privilege arises from the convenience to trade, which is not consulted in this case. And he thought it bad upon the objection to the fund out of which it was to be paid: however, being a mercantile transaction, he left it to the special jury of merchants, who found it to be no bill of exchange, on the objection for want of value received. *Banbury v. Lisset*.

See Barnard, K.
B. 88.

3. Foreign Bills.

1. The custom of merchants in relation to foreign bills of exchange, seems to have prevailed time out of mind, and was at first introduced for the expedition of trade, and its safety, and to prevent the exportation of money out of the realm, and hath therefore been always countenanced and encouraged, as a matter of great ease and advantage to trade, and is now become part of the law of the land; and as bills of exchange are established meerly by the custom of merchants, and for their benefit; so their rules and customs are allowed to prescribe their form and several properties, as to their creating engagements on the parties that are concerned in them.

Governed by the custom of merchants. 3 Bac. Abr. 602.

2. By this custom, if a merchant abroad draws a bill on a merchant here, or *vice versa*, requesting him to pay a certain sum of money, and the drawer sets his name to it, this amounts to a promise to pay, and subjects him, though but a collateral engagement, to an action on the non payment.

Drawer of bill liable to an action. Rol. Abr. 6. Cro. Jac. 306. Cro. Car. 301.

3. And if the drawer, or he on whom the bill is drawn, refuse to accept it, or having accepted, refuse to pay it, the payee, or he in whose favour it is drawn, may protest it, and shall recover against the drawer not only the principal sum, but likewise all interest, costs, and damages by reason of the protest or refusal of acceptance or payment of the money.

So is the drawer. Cro. Car. 301.

4. But though the custom of merchants, in relation to bills of exchange, be established by the common law, and such bills being securities for money, are of great credit among them

Stat. of limitations pleadable to a bill of exchange, which is no specialty. Carth 3. Mod. 105. Show 341. Com. 190. See Carth. 226. fo 401. Vent. 20.

Bills of Exchange.

them, yet they are not allowed to be securities of as high a nature as bonds or specialties, and therefore it hath been adjudged, that a bill of exchange is within the statute of limitation, and must be sued for within six years after it becomes payable. *Renew v. Axton.*

Bill of exchange
only a simple
contract debt.
3. Bac. Abr. 602.

5. Also a bill of exchange is to be considered as a simple contract debt, in a course of administration, which an executor or administrator cannot discharge before debts by bond, without being guilty of a *devastavit*.

Carth. 373.
Comb. 392.
3 Salk. 164.

6. So if a merchant in *London* draws a bill of exchange on his correspondent in *Newcastle*, in favour of J. S. and the bill is refused, and J. S. dies intestate, his administrator, on letters of administration taken out in *Durham*, cannot bring an action, on the custom of merchants, against the drawer, and lay the same in *London*; for that a bill of exchange is not equal to a bond or specialty, which are the deceased's goods, where they happen to be at his death, but is a simple contract, which follows the person of the debtor, and makes *bona notabilia* where the debtor resides; and therefore administration ought to have been taken out in *London*. *Yeomans v. Bradshaw.*

How drawn.
Mol. B. 2. c. 10.
Sect. 10. 3 Bac.
Abr. 603. Carth.
510. Salk. 130.
Ld Raym. 810.
7 Mod. 86, 87.

7. Bills of exchange are usually drawn payable on sight, so many days after sight or after date, or on single, double, or treble usances; and it is frequent to draw two or three for the same sum, and of the same date, for fear of loss or miscarriage, which carry a condition with them that only one shall be paid. *East v. Effington.*

4. Usances.

4. Usances.

The second time of payment is called *ufance*; it is known or taken to be the compass of one month, to be computed from the date of the bill, and that governed according to the custom of the place where those exchanges do run, for which reason, in an action on a bill of exchange payable at *ufance*, the plaintiff must shew what the *ufance* is.

Ufance, what it is. Mol. B. 2. c. 10. Sect. 11. Salk. 135.

The third is double or treble *ufance*, two or three months: sometimes there are exchanges made upon half *ufance*.

Double, treble *ufance*, what. Ib. Sect. 12.

The times of payment do alter the price of exchanges according to time, commonly after twelve, fifteen, or twenty in the hundred by the year.

Time of payment alters bills of exchange. Ibid.

Ufance from London to	Middleborough	are generally accounted 1 month's time from the payment of the bill.
	Amsterdam	
	Antwerp	
	Bruges	
	Rotterdam	
Ufance from Amsterdam to	Lille	are generally accounted 2 months from the date, &c.
	Roan	
	Paris	
	Rome	
	Genoa	
	Venice	
	Naples	
Ufance from London to	Palermo	is sometimes accounted treble <i>ufance</i> from the date of the bill.
	Luca	
	Sevil	
	Lisbon	
	Florence	
	Venice	
	Leghorn	
	Zant	
	Aleppo	
	Luca	

Ufances from different places to different places. Ibid.

The bills may have a longer, sometimes a shorter time, there is no direct certainty, but only that single *ufance* is a month, double *ufance* two months, &c.

5. Protest.

5. Protest.

Drawer of a bill must have notice of its being protested. Vent. 45. Quere. and see Comb. 451.

Not necessary to make protest the same day money is due. Mod. 27. Show. 318. 12 Mod. 15. See Show. 319.

Within what time protest must be made. Comb. 152. See Show. 165.

When if accepted, or payable at sight. Show. 164.

Indorsee may bring an action, notwithstanding his own indorsement thereon. Show. 163.

Where no protest necessary. Show. 164.

Where protest on copy of a bill is sufficient. Show. 164.

A draws a bill upon B for the use of C, upon non-payment C protests the bill. He cannot sue A, unless he gives him notice that the bill is protested; for A may have the effects of B in his hands, by which he may satisfy himself. *Anon.*

After verdict it was moved for a new trial, that the protest was not on the day the money became due; but *Twisden J.* said it had been ruled, that if a bill of exchange be denied to be paid, the protest must be in a reasonable time, and that is within a fortnight; but that the debt is not lost by not doing it by the day, and a new trial was denied. *Butler v. Play.*

The time of protesting bills of exchange, to make the drawer liable, is at the end of two months. *Sarsfield v. Witherly.*

If a bill be *accepted*, the protest must be at the day of payment; if *at sight*, then on the third day of grace, and a bill negotiated after day of payment is a bill at sight, agreed by merchants. *Debers v. Harriot.*

A bill of exchange is made payable to A, A indorses it to B, B indorses it to C; the bill is protested for non-payment. B may bring an action on this bill, notwithstanding his indorsement. *Same case.*

Some merchants said, that if a bill be negotiated by indorsement after the bill is payable, there is no need of a protest at all. Others, that a protest must be in some convenient time. *Same case.*

All the merchants agreed, that if a bill is lost, and the drawer might be resorted to for a new bill, then no protest could be upon a copy; but where a bill is lost, and no new one can be had,

had, and the party did not insist to have the original bill, but refused payment for another reason, there such protest made upon a copy for non-payment is good. *Same case.*

Indorsee of foreign bills need not demand payment till the three days allowed are expired, and after the three days the indorsee may protest it; and it seems the same time of three days ought to be allowed for inland bills *per Holt, Ch. J. Tassal v. Lewis.*

Protest need not be made till after days of grace. Salk. 132. Skin. 410, 411.

The custom of merchants is, that if B, upon whom a bill of exchange is drawn, absconds before the day of payment, the man to whom it is payable may protest it, to have better security for the payment, and to give notice to the drawer of the absconding of B, and after the time of payment is incurred, then it ought to be protested for non-payment the same day of payment, or after it, but no protest for non-payment can be before the day that it is payable. Proved by merchants at Guildhall, before *Treb Ch. J.* and the plaintiff was nonsuited, because he had declared, upon a custom, to protest for non-payment before the day of payment. *Anon.*

Bill may be protested before the day for better security, but not for non-payment. *Ld. Raym. 743.*

In case of foreign bills of exchange, the custom is, that three days are allowed for payment of them, and if they are not paid on the last of the said days, the party ought immediately to protest the bill, and return it, and by this means the drawer will be charged; but if he does not protest it the last of the three days, which are called the days of grace, there, although he upon whom the bill is drawn fails, the drawer will not be chargeable; for it shall be reckoned his folly that he did not protest, &c. but if it happens that the last day of the said three days is a Sunday, or great holiday, as Christmas day, &c. upon which

Foreign bill must be protested on the last day of payment. *Ibid.*

Bills of Exchange.

If the last of the three days be a great holiday, the day before is the day of payment. Ibid.

Bill may be protested without notice. Comb. 451. Quere, and see Vent. 45.

Indeb. Assump. lies on a protested bill. Ibid.

Where inland bills may be protested. 9 and 10 W. III. c. 17. Sect. 1.

which no money used to be paid, there the party ought to demand the money upon the second day; and if it is not paid, he ought to protest the bill the said second day, otherwise it will be at his own peril, for the drawer will not be chargeable. Merchants in evidence at a trial at Guildhall before *Holt*, Ch. J. swore the custom of merchants to be such, which was approved of by *Holt*, Ch. J. *Tassal v. Lewis*.

If a foreign bill be drawn on an *English* merchant, payable at so many days sight, tho' the days incur without any notice given to the party on whom it is drawn, yet that bill, according to the custom of merchantss, may be protested, and thereby recourse had to the first drawer for the money, which *Holt*, Ch. J. thought unreasonable, because the drawer ought not to be at the mercy of him that has the bill. *Ec. Anon.*

If a bill be drawn for like value received, and this is protested, an *indebitatus assumpsit* lies against the drawer. *Anon.*

“All inland bills of exchange of five pounds or upwards, in which the value shall be expressed to be received, drawn payable at a certain number of days, *Ec.* after the date thereof, may, after acceptance, (which shall be by underwriting under the party's hand) and the expiration of three days after the same shall be due, be protested by a notary public, or in default of such notary public, by any other substantial person of the place, before two witnesses, refusal or neglect being first made of the payment.”

“Which protest shall be made and written under a fair written copy of the said bill of exchange, in the words and form following:”

“KNOW

KNOW all men that I, A. B. on the _____ day of _____, at the usual place of abode of the said _____, have demanded payment of the bill, of the which the above is the copy which the said _____ did not pay; wherefore I, the said _____ do hereby protest the said bill, dated this _____ day of _____.

Form of the protest.

“ Which protest, so made, as aforesaid, shall be notified within fourteen days after making thereof, be sent, or otherwise due notice be given thereof, to the party from whom the bills were received; who, upon producing such protest, is to pay the said bills with interest and charges from the protesting: for which protest there shall not be paid above sixpence; and in default of such protest, or due notice, within the ten days limited, the person so failing shall be liable to all costs, damages, and interest.”

Protest, or notice thereof, to be given in fourteen days after made; and sixpence to be paid for the same. Sect. 2.

A bill of exchange was protested, and lost, and an action brought against the drawer; and it was proved, that the defendant had owned he had drawn the bill, and held good by *Holt*; and he said, that this being an outlandish bill, the drawer was made liable by the protest; but no protest necessary in case of an inland bill, and that to make a bill payable to one's order, was the same as if it were to him or order. And he said, that if the defendant could make it appear, that he was at any damage for want of notice of the protest, as if drawee had failed in the mean time, &c. it would be incumbent upon the plaintiff to prove notice given of the protest in convenient time. *Hart v. King.*

Protest on a foreign bill makes the drawer liable. 12 Mod. 309.

If a bill be accepted at *Amsterdam*, and no house named where the payment is to be, the

In what case a protest may be made. 12 Mod.

G

party 310.

Bills of Exchange.

party need not acquiesce to it, but may protest the bill; but if he will acquiesce, it is well enough, *per cur. Mitford v. Walot.*

Salk. 130.

All the difference between foreign and inland bills is, that foreign bills must be protested before a public notary, before the drawer may be charged; but inland bills need no protest; *per Holt, ch. j. Butler v. Crips.*

3 & 4 Ann. c.
9. sect. 4.

In case the party on whom an inland bill of exchange shall be drawn, shall refuse to accept the same, by underwriting the same, the party to whom payable, shall cause such bill to be protested; for non-acceptance, 'as in case of foreign bills, for which protest shall be paid two shillings, and no more.'

Sect. 6.

"No such protest shall be necessary for non-payment, unless the value be expressed in such bill to be received, and unless the bill be drawn for twenty pounds or upwards, and the protest shall be made for non-acceptance by persons appointed."

Sect. 7.

"If any person accept such bill of exchange in satisfaction of any former debt, the same shall be esteemed a full payment; if he doth not his endeavour to get the same accepted, and paid, and make his protest for non-acceptance or non-payment."

Protest need not
be proved. 12
Mod. 345.

Plaintiff to shew a protest, produced an instrument attested by a notary public; and though it was insisted upon, that he should prove this instrument, or at least give some account how he came by it, *Holt* ruled it not to be necessary; for that he said, would destroy commerce and public transactions of this nature.

Anon.

Protest nothing
more than that a
bill is not ac-
cepted or paid.
Mol. b. 2. c. 10.
sect. 17. 3 Bac.
Abr. 612. 6
Mod. 80. Salk.
131.

A protest does not raise any debts, but only serves to give formal notice, that the bill is not accepted; or accepted and not paid; and this, by the common law, was, and is still necessary

on

on every foreign bill before the drawer can be charged; but it was not required on any inland bill, before the statute of 9 and 10 *W. III. c. 17*; nor does the want of it, since that statute, destroy the remedy which the party had before against the drawer; but only deprives him of interest and costs against the drawer, unless there be notice by protest, as that statute prescribes.

He to whom the bill is payable, must regularly resort to the drawee, and desire him to accept the bill, before there can be a protest; but if he be dead, or cannot be found, they are good causes for protesting the bill: also, if after acceptance the drawee dies, there is to be a demand of his executors, or administrators; and in default of payment a protest; and in case the money becomes due before an executor or administrator can be appointed yet this delay is sufficient cause to protest the bill.

Demand before protest. *Mol. b. 2. c. 10. Sect. 34.*
3 *Bac. Abr. 612.*
See *Carth. 510.*

But if he to whom the money is to be paid, dies, there can be no protest before probate of his will or administration granted; for none but his executors or administrators can give a legal discharge or acquittance for the money, and consequently none other can sue for or demand the same; and though security be offered to indemnify the drawee against the executors or administrators, yet is he not obliged to accept thereof, being a matter left entirely to his own discretion, to judge and determine on the sufficiency of such security: and in this case it is said, that if a public notary protest the bill, an action on the case lies against him.

Protest not to be made if the party to whom the money is payable dies. *Mol. b. 2. c. 10. sect. 34.*

If a bill be left with a merchant to accept, which is lost or mislaid, he to whom it is payable is to request the merchant to give him a note for the payment, according to the time

When two protests necessary. *ibid. sect. 26.*
Marius, 121.

Bills of Exchange.

limited in the bill; otherwise there must be two protests; the one for non-acceptance, and the other for non-payment; and though such note be given, yet, if the merchant happens to fail, there must be a protest for the non-payment, in order to charge the drawer.

Protest to be made by a notary public.

Mol. b. 2. c. 10. sect. 17. Skin. 272. 3 Bac. Abr. 613. Gilb. Evid. 118.

Pleading protest. Comb. 153. 3 Bac. Abr. 613.

Protest is not necessary in an action on an inland bill. 2 Loid Raym. 993. 6 Mod. 80. 3 Salk. 69. 131.

The protest is usually made by some public notary; and such protest is, *prima facie*, good evidence that the bill was not accepted; or, if accepted, that it was not paid, and sufficient to put the proof on the other side.

And as, by the custom of merchants, public notaries usually protest bills, it hath been held that pleading *protestavit seu protestari causavit* is sufficient; and that the party may plead *protestavit*, and give in evidence that the public notary did it.

Error upon a judgment in the Common-pleas, in an action on the case upon an inland bill of exchange brought against the drawer. The plaintiff had judgment by *nil dicit*. Mr. *Raymond* for the plaintiff in error urged, that it does not appear in the declaration, that the bill was protested; and since the last statute of 9 and 10 *W. III.* no action can be brought against the drawer, unless there be a protest made as the act requires, which ought to be set forth in the declaration. At the common law the plaintiff had no remedy against the drawer without notice given him of the non-payment by the party on whom the bill was drawn; and unless this statute makes a protest necessary, before any action can be maintained against the drawer, it does nothing, and the party had the same advantage before the act as since.

Mr. *Parker*, for the defendant in error, insisted, that the declaration was sufficient, because this bill is not within the statute; for it does not appear, that the bill was accepted by the

the underwriting of the person on whom it was drawn, as the act requires ; and there can be no protest without such subscription ; and for that reason he said, the merchants now refuse to underwrite an acceptance. But if this bill be within the statute, yet the protest need not be set forth in the account, because the protest is intended for the benefit of the drawer, for nobody else can be damnified for want of notice ; and if he receive damage for want of such protest, if the damage amount to the value of the bill, that will be a discharge of the action ; or if it be less, then the drawer ought to have as much as it amounts to. But this must be taken advantage of, either upon the evidence, or by a special verdict, whereby it may appear to the courts, which cannot be in this case.

Holt, chief justice. In this case, as well as upon a foreign bill of exchange, the plaintiff must give convenient notice to the drawer, of the non-payment of the bill ; for if the drawer receive prejudice by the plaintiff's delay, the plaintiff shall not recover. A protest on a foreign bill is part of the custom ; but on an inland bill no protest was necessary by the common law, but by this statute. But this statute does not destroy, or take away, the party's action, where there is no protest ; nor is the want of a protest any bar of the action ; but the act seems only to take away from the plaintiff his interest or damages, where he has not made a protest ; or to give the drawer a remedy against him by way of action for the costs and damages.

Powel, justice, of the same opinion. I cannot agree to take away a man's right by ambiguous words in an act of parliament ; they must be express words which take away a

Bills of Exchange.

man's action. I believe a protest was never set forth in any declaration since this statute, which *Holt* agreed.

Another exception was taken to the execution of the writ of inquiry. The writ is returned such a day *in quindena martini*; and the inquisition returned is, *virtute brevis*, &c. returned *in quindena Martini ultimo praeterito*; which must be a year before; viz. *Martinmas* twelvemonth; and St. *Martin's* day is a fixed feast, and always on the eleventh of *November*.

Holt, chief-justice. The return is made on the twenty-eighth of *November*, which is the last day in full term.

Mr. *Parker* You cannot take notice of the day of the month.

Holt, chief justice. We take notice of all feasts, and the almanack is part of the common-law, the calendar being established by act of parliament; and it is published before the Common-Prayer-Book. Let the judgment be affirmed. *Brough v. Parkings*.

6. Inland Bills.

6 Mod. 29, 80.
Salk. 131.

1. Inland bills of exchange are those drawn by one merchant residing in one part of the kingdom, on another residing in some city or town within the same kingdom; and these also being found useful to trade and commerce, have been established on the same foot with foreign bills; but at common law they differ from them in this, that there was no custom of protesting them, so as to subject the drawer to interest and damages in case of non-payment, as there was on foreign bills.

2. To

2. To remedy this inconveniency, by the the 9th and 10th of *W. III. cap. 17*, reciting that great damages, and other inconveniencies do frequently happen, in the course of trade and commerce, by reason of delays of payment, and other neglects on inland bills of exchange, "It is enacted, That all and every bill or bills of exchange drawn in, or dated at and from, any trading city or town, or any other place in the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*," of the sum of five pounds sterling, or upwards, upon any person or persons of or in *London*, or any other trading city, town, or any other place, (in which a bill or bills of exchange shall be acknowledged, and expressed the said value to be received) and is and shall be drawn payable at a certain number of days, weeks or months after the date thereof, that from and after presentation and acceptance of the said bill or bills of exchange (which acceptance shall be, by the underwriting the same under the party's hand so accepting) and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested by a notary public, and, in default of such notary public, by any other substantial person of the city, town, or place, in the presence of two or more credible witnesses; refusal or neglect being first made of due payment of the same; which protest, so made, as aforesaid, shall, within fourteen days after making thereof, be sent, or otherwise due."

Bills of exchange drawn in England, &c. of five pounds, or upwards, payable at a certain number of days, &c. after acceptance, and three days after due, party may protest the same. 9 & 10 W. III. c. 17. sect. 1.

3. "Notice shall be given thereof to the party from whom the said bill or bills were received; who is, upon producing such protest, to repay

In default of protest made, &c. person failing liable to costs. Sect. 2.

Bills of Exchange.

the said bill or bills, together with all interest and charges from the day such bill or bills were protested; for which protest shall be paid a sum not exceeding the sum of sixpence; and in default or neglect of such protest made and sent, or due notice given within the days before limited, the person failing or neglecting thereof, is and shall be liable to all costs, damages and interest which do and shall accrue thereby."

Bills lost or miscarried, drawer to give another.
Sect. 3.

4. "If any such inland bill or bills of exchange shall happen to be lost or miscarried, within the time before limited for payment of the same, the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given the person or persons to whom they are and shall be so delivered; on giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange, so alledged to be lost or miscarried, shall be found again."

5. But this statute was deficient, in that it had no effect, unless the party on whom the bill was drawn, accepted it, by underwriting the same, which few or none cared to do.

Party refusing to underwrite bill of exchange, such bill may be protested for non-acceptance. 3 & 4 An. c. 9. Sect. 4.

6. To remedy which, by the 3d and 4th An. c. 9. (made perpetual by 7 An. c. 25. sect. 3.) "It is enacted, That, in case, upon presenting any such bill or bills of exchange, the party or parties on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same, as aforesaid, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange; any thing in the said act, or any other

other law, to the contrary notwithstanding; for which protest there shall be paid two shillings, and no more."

7. "No acceptance of any such inland bills of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; and if such bill be not accepted by such underwriting, or indorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest the same be sent, or otherwise notice thereof given, to the party from whom the bill was received, or left in writing at his or her usual place of abode; and if such bill be accepted, and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given in manner and form abovementioned: nevertheless, every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made for non-acceptance or non-payment thereof; and notice thereof be sent, given, or left, as aforesaid."

No acceptance of inland bills of exchange to be sufficient, unless the same be underwritten; nor drawer thereof liable to costs, &c. Sect. 5.

8. "No such protest shall be necessary, either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged, and expressed on such bill to be received, and unless such bill be drawn for the payment of 20 pounds sterling, and that the protest hereby required for non-acceptance, shall be made by such persons as are appointed

No protest necessary for non-payment, unless the bill be drawn for 20 pounds, or upwards, by whom the protest shall be made. Sect. 6.

Bills of Exchange.

appointed by 9 and 10 W. III. c. 17. *above in part recited.*"

Acceptance of a bill esteemed a full payment of debt. Sect. 7. See Sel. Caf. of Eyid. 3.

9. "If any person doth accept any such bill of exchange for, and in satisfaction of, any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and compleat payment of such debt, if such person, accepting of any such bill for his debts, doth not take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid; and make his protest as aforesaid, either for non-acceptance, or non-payment thereof."

This act not to discharge other remedies. Test. S.

10. "Nothing herein contained shall extend to discharge any remedy that any person may have against the drawer, acceptor, or indorser of such bill."

7. Drawer.

Drawer need not be a merchant. Show. 125. 2 Vent. 292, 295. Carth. 82. Comb. 45, 152.

1. A gentleman travelling beyond sea for his education, and who never was a merchant, draws a bill. He is, by drawing such a bill, become a trader, and within the custom of merchants, as to bills of exchange. *Witherley v. Sarsfield.*

Though indorsement void, drawer liable. 2 Keb. 303.

2. If the indorsement be void, yet he that draws the bill shall be liable to him to whose use it was first made, *per cur* Dashwood v. Lee.

How liable if the bill mentions value received; and how if it does not. Show. 5.

3. If the drawer mentions it for value received, then he is chargeable at common law; but if no such mention, then you must come upon the custom of merchants only, *per Holt*, chief justice. *Cramlington v. Evans.*

Not liable if the money be not demanded in convenient time. Show. 155.

4. Pay to A, or his order, forty pounds, and place it to my account, value received. The money was not demanded till the action, which

which was an *indebit assumpsit*) was brought against the drawer, and which was two years after the bill was given. *Holt*, chief justice, upon consideration, held that such a note should be deemed payment, and that the plaintiff was satisfied with the merchant as his debtor, if he did not, within convenient time, resort back to the drawer; and keeping the bill so long, was an evidence, that he thought the merchant good at that time, and that he agreed to take him as his debtor. *Darrach v. Savage*.

5. If the indorsee of a bill accepts but two pence from the acceptor, he can never after resort to the drawer. *Tassell v. Lewis*.

When the drawer cannot be resorted to. Lord Raym. 1744.

6. *A* gave to *B* a bill of exchange for value received. *B* assigns it to *C* for an honest debt. *C* brings an *indebitatus assumpsit* on this against *A*, and had judgment; on which *A* brings his bill to be relieved in equity against this judgment, because there was really no value received at the giving this bill; and *C* would have no prejudice, who might still resort to *B* upon his original debt. It was answered that *A* might be relieved against *B*, or any claiming as servant or factor of or to the use of *B*: but the chancellor held that *C*, being an honest creditor, and coming by this bill fairly, for the satisfaction of a just debt, he would not relieve against him, because it would tend to destroy trade, which is carried on every where by bills of exchange; and he would not lessen an honest creditor's security. *Anon.*

Drawer of bill of exchange, tho' given without consideration, shall not be relieved against a third person, to whom it was assigned for an honest debt. Comyn. 43.

7. If the party, to whose hands a bill of exchange comes, neglects to receive the money from the acceptor, there he shall not resort to the first drawer, because he hath relied on the acceptor, the first drawer being only chargeable

What neglect will discharge the drawer. 12 Mod. 203.

ble by custom or contract in law. *Clerk v. Mundall.*

Salk. 127.

8. *A* draws a bill on *B*, payable to *C* in three days. *B* broke, and *C* kept the bill four years, and then brought *assumpsit* against *A*. *Treby*, chief justice, held, that when one draws a bill of exchange, he subjects himself to the payment, if the drawee refuses either to accept or pay; but then, if the bill is not paid in convenient time, the person to whom it is payable shall give the drawer notice thereof; for otherwise the law will imply that the bill was paid, because there is a trust between the parties; and it may be injurious to commerce if a bill may rise up to charge the drawer at any distance of time, when, in the mean time, all accounts may have been adjusted between them. *Allen v. Dockway.*

Protest makes drawer of a foreign bill liable. 12 Mod. 309.

9. In foreign bills of exchange the protest makes the drawer liable, and notice should be given of the protest to the drawer in convenient time. *Hart v. King.*

What acceptance does not bind the drawer. 12 Mod. 310.

10. It was agreed that an acceptance, or negotiation, in *England*, after a bill becomes payable, shall bind the acceptor, or indorser, though not perhaps the original drawer. *Mitford v. Walcot.*

How the drawer is discharged. 12 Mod. 509.

11. *A* draws a bill of exchange in payment, and the party does not call for the money from the drawee in convenient time, and he fails, he shall then come upon the drawer. *Anon.*

Drawer must have notice before action brought. 8 Mod. 43.

12. If a bill of exchange be not paid by the indorser, the drawee must give notice of non-payment to the drawer before he brings an action against him. *Lawrence v. Jacob.*

If the drawer of a bill be an infant, he is not liable. Carth. 160.

13. If an infant draws a bill of exchange, infancy is a good plea in bar to an action brought against him. *Williams v. Harrison.*

8. *Acceptor and Acceptance.*

1. If a bill of exchange be tendered, and the party subscribes accepted, or, accepted by me, A. B. or being in the Exchange, says, I accept the bill, and will pay it according to the contents, this amounts, without all controversy, to an acceptance.

What amounts to an acceptance. Mol. B. 2. c. 10. Sect. 16.

2. A small matter amounts to an acceptance, so that there be a right understanding between the parties ; as, "Leave your bill with me, and I will accept it," or, "Call for it to-morrow, and it shall be accepted;" that does oblige as effectually, by custom of merchants, and according to law, as if the party had actually subscribed or signed it, (which is usually done.)

A small matter amounts to an acceptance. Ib. Sect. 20.

3. But if a man shall say, "Leave your bill with me, I will look over my accounts and books between the drawer and me, and call to morrow, and accordingly the bill shall be accepted;" this shall not amount to a complete acceptance ; for this mention of his books and accounts was really intended to see if there were effects in his hands to answer, without which perhaps he would not accept the same ; and so it was ruled by Lord Chief Justice *Hale* at Guildhall.

Ibid.

4. Where a bill of exchange is payable to A's order, that is to himself if he makes no order, and if the party underwrites the bill, viz. "presented such a day," or only the day of the month, it is such an acknowledgement of the bill as amounts to an acceptance ; *per Holt*, Ch. J. and this by the jurors was declared to be common practice. *Anon.*

Comb. 401. See Show 8.

5. Acceptance of a bill upon two by one partner, binds both if it concerns the joint trade ;

Acceptance by one partner binds both, unless ac-

cepted distinctly from the partnership. *Salk. 126.* only in a distinct interest, and respect. *Pinkney v. Hall.* *Ld. Raym. 175.* *12 Mod. 345.*

Acceptance may be qualified. *Comb. 452.*

6. A bill drawn by A on B, and B accepts it by indorsement, thus, (I do accept this bill, to be paid half in money, and half in bills). It was alledged, that B's writing on the bill was sufficient to charge him with the whole sum; but it was proved by divers merchants, that the custom among them was quite otherwise, and that there might be a qualification of an acceptance; for he that may refuse the bill totally, may refuse it in part; but he to whom the bill is due, may refuse such acceptance, and protest it, so as to charge the first drawer; and though there be an acceptance, yet after that he has the same liberty of charging the first drawer, as he had before. *Petit v. Benson.*

There may be a partial acceptance of a foreign bill. *Stra. 214.*

7. Action upon the case, upon the custom of merchants, brought by the person to whom a foreign bill of exchange is made payable, against the acceptor. And the defendant sets forth, that one *James Collet*, being a merchant residing at *Christiania* in *Norway*, according to the custom of merchants, drew his first bill of exchange upon the defendant, requesting him to pay the plaintiff such first bill (his second not being paid) of one hundred and twenty-seven pounds, eighteen shillings, and fourpence, which bill was afterwards, viz. Dec. 1717, shewn to the defendant, who accepted to pay one hundred pounds, part thereof, upon the 8th day of *February* following, by virtue whereof he became chargeable, *et in consideration inde die et anno ultimo supradictis super se assumpsit*, to pay the same on the said 8th day of *Feb. tunc prox. sequentem*, which he has not done according to his undertaking. There is

is likewise a count for monies had and received, and an *insimul computassent*. The defendant, as to these two counts, pleads *non assumpsit*, and as to the count upon the bill, he pleads, that the said *James Collet* drew another bill for one hundred pounds only, wherein he countermands the payment of the odd twenty-seven pounds, eighteen shillings and four-pence, by virtue whereof the defendant paid the hundred pounds in satisfaction of the first bill, and the plaintiff accordingly received it in satisfaction. The plaintiff, *protestando*, that the defendant did not pay it in satisfaction, for plea saith, that he never received it in satisfaction; and to this replication defendant demurs.

Strange, pro defendente. I shall not trouble the court with an exception which has formerly been taken to these replications, that the payment in satisfaction being admitted, the traverse of the acceptance is immaterial; for I am sensible, it has been adjudged to be well enough in the case of *Young v. Ruddle*, and of *Hawkshaw v. Rowlings*, in this court, Hil. 3d of his late majesty, upon this ground, that there can be no payment in satisfaction, without an acceptance in satisfaction; and therefore a traverse of the acceptance is an argumentative denial of the payment; for if the plaintiff did not accept it in satisfaction, the consequence of that is, that it was not paid in satisfaction.

Salk. 627.

Laying therefore the plea and replication aside, I shall take up the case as it stands upon the declaration, and upon that offer some things distinctly, both as to the matter, and as to the manner of it.

As to the matter of it, the case is no more than this: the person to whom a foreign bill of exchange is made payable, brings his action against the drawer, upon a partial acceptance
for

for so much of it as he undertook to pay, and counts upon the custom of merchants.

The single point which will arise upon this case is, whether a partial acceptance be good or not within the custom of merchants? and I shall endeavour to prove, that this acceptance is a void acceptance, and consequently the plaintiff has no cause of action.

That I may not be misunderstood when I call this a void acceptance, I would premise, that I do not mean, it is so absolutely void as to exclude any remedy against the acceptor, for I must admit, that this acceptance will create a contract between the parties, upon which an action upon the case would have laid. But what I shall insist upon is, that this is a void acceptance within the custom of merchants, upon which the plaintiff has founded his case; and if it be void within the custom of merchants, then, whatever effect it would have as a private contract between the parties, will be a matter foreign to the present question, inasmuch as the plaintiff has not relied on it as such, but has brought his action upon the custom.

I have inquired into the practice of merchants in this case, but have not been able to get any certain account of this matter. The true reason of which I apprehend to be, that it is a case which seldom or never happens amongst merchants, for they honour one another's bills, though there are no effects of the drawer's in their hands; and they would esteem it the greatest blemish that could be cast upon them, if their correspondent should once refuse to answer their bills, any further than he had effects in his hands.

What account I have received I shall submit to the court. Some are of opinion, that an
acceptance

acceptance for part is an acceptance for the whole, inasmuch as it deprives the party of the benefit of protesting, and so resorting back to the drawer ; but I apprehend there is no reason at all for this. To say that because commonly a man does honour another's bill beyond what effects he has in his hands, that therefore he must do it, is a strange conclusion ; for suppose he has but twenty pounds of the drawer's in his hands, and is bound to answer a bill for so much, it would be highly unreasonable, that in case the other should draw for ten thousand pounds, this man must either pay the whole, or subject himself to an action for non-performance of the condition.

But if this notion should prevail, that an acceptance for part is an acceptance for the whole, yet as on the one hand it charges the acceptor with the intire sum, so on the other hand it discharges him of this action ; for then there can be no colour to split the demand into two actions, but the plaintiff in declaring for part ought to shew that the rest is satisfied. *Salk.* 65.

Others are of opinion, that the party ought not to have taken this acceptance, but protested the bill as to the whole, and send for another to the value of what the drawee would answer. This likewise makes for the acceptor the defendant.

I am informed indeed, there is one gentleman does attend to say, that this matter has happened in his own experience ; but he, by what I find, is alone in that opinion, and perhaps may not have considered the consequences of it.

As there is this diversity of opinions upon a matter which seldom or never comes in practice, I shall take it upon the reason of the
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Bills of Exchange.

thing, with a view likewise to the many inconveniencies which will follow as a consequence of establishing this partial acceptance.

The better to come at this, it may not be improper to state the method of transacting these affairs. When the party to whom a bill of exchange is made payable receives it, he immediately applies to the drawee to get his acceptance: if he accepts it, nothing further is done till the day of payment, and then, if it be paid, the matter is at an end. But if the drawee will not accept it, then the party is to protest the bill, and send back the protest by the next post. When the time of payment comes, he tenders the bill again, and then the drawee may either pay it or refuse it: if he refuses it then there is a second protest for non-payment, and the bill itself is returned: and so it is if he accepts it, and afterwards refuses to pay it. From all this I would infer, that there can be no partial protest for non-acceptance, which, as I am informed, is a protest not in the memory of any but one of the notaries public. The words of all protests are, *I exhibited the original bill to the person to whom it is directed, and demanded his acceptance thereof.* Now an acceptance of part is not an acceptance thereof, no more than payment of part is a payment of the whole. There is a book which goes by the name of * *Advice concerning bills of exchange*, and is esteemed amongst those who are most conversant in these affairs. And in fol. 33 of that book it is said, that nothing but an acceptance to pay *secundum tenorem billæ*, can deprive the party of the benefit of a protest. And in fol. 16 of the same book he puts the case of a bill drawn on A and B, who are not joint traders, and an acceptance by one only. This, says he, goes for nothing, and the

* Marius.

the party must protest the bill as in case of no acceptance. These are the words of the book, and by putting the case of two who are not joint traders, I should apprehend he means, that each being charged with a moiety, the acceptance of one is but an acceptance to pay a moiety, which is but a partial acceptance, and therefore void. And this is explained by the case of *Pinkney v. Hall*, where one joint trader accepted a bill, and it was held to be the acceptance of both, because both were equally liable to pay the whole. And to this purpose likewise is * *Molloy de jure maritimo*. Salk. 126.

* Mol. B. 2. c.
10. Sect. 18.

If there can be no protest for non-acceptance of part, I would consider how the case would stand in regard to allowing this partial acceptance. The natural and plain consequence of that will be, to put it in the power of the drawee to defeat the other of the benefit of protesting a bill for ten thousand pounds by his acceptance to pay one penny only; for this I would submit, that if the party may take such an acceptance, he must take it: if it will be good, he cannot refuse it, for it is not at his election to charge the drawer but upon the other's default: the drawee is the person he must first resort to, and if he refuses, then, and not till then, is there a proper remedy against the drawer; and therefore in the action against the drawer, the plaintiff must shew a protest, which is an endeavour to receive the money of the drawer. *Salk. 131.*

But even admitting there may be a partial protest for non-acceptance, yet the inconveniences which will follow of course, are so great, that I hope it shall never be established by the court.

It would be endless to put cases where it has been held, that rent charges and the like

Bills of Exchange.

cannot be apportioned ; and therefore I shall rely entirely upon the reason of the thing, that in this case the contract between the drawer and the person to whom the bill is payable is entire, and not divisible. By this contract the drawer, (and consequently the indorser) subjects himself to an action, if the money be not paid at the time : but though he becomes liable to one action, yet there is no reason, that by transactions between the party to whom the bill is payable, and the drawee, to which he is not privy, this contract shall be branched out into several actions, which will unavoidably be the case of every partial acceptance ; for I do not apprehend how this can be reduced to one action by refusing this partial acceptance, and protesting for the whole ; because (as I observed before) if the party may take it, he must take it, and can charge the drawer no further than there is a default in the drawee.

As therefore two actions are the fewest he can be charged with, I would beg leave to instance how he may be charged with a great many. The acceptor will charge him as far as his undertaking ; then another for the honor of the drawer (as it is usual amongst merchants) may undertake for another part, and by the same reason a third, and a fourth, and nobody can say where it shall stop : so many different persons may accept for so many different pence, and every one of these has his distinct remedy against the drawer.

This is too great an inconvenience to be got over, and it is such an inconvenience (I mean the multiplicity of suits) as the common law has always endeavoured to meet with. In the case of *Hawkins v. Cardee*, it was held, that the indorsee of part could have no action, because,
says

says my Lord Chief Justice *Holt*, the drawer having only subjected himself to one action, it cannot be divided so as to subject him to two. If the grantee of a rent charge levies a fine of part, the conusee cannot compel an attonement, for that would be to give two actions against the tenant. So if a feoffment were made to a man and his heirs with warranty, and he makes a feoffment to two, the warranty is gone. If two take lands jointly with warranty, and one makes a feoffment, the warranty is gone as to him, but remains as to his companion, so as he may vouch for a moiety; and at common law if they had made a partition, the warranty was lost. *Co. Litt.* 187. *a.* And all this goes upon that ground, that it being *res inter alios acta*, it shall not turn to the prejudice of a third person. But this partial acceptance is a matter transacted between meer strangers, and therefore shall not hurt the drawer, who was no party to it. No act of theirs, which would be prejudicial to him, shall bind him; but the subjecting him to several actions will be a prejudice; therefore he shall not be subjected to several actions.

The great benefit arising to the public from these bills is, their being negociable, and passing about as well as money; for every body is sensible, that without the assistance of these bills our trade could never be carried on for want of sufficient specie; not to mention the trouble and danger of returning money, which is avoided by this expedient. It is this benefit which the public receives from these bills, that has intitled them to all the favour they have received, of which innumerable instances might be given. For this reason it has been held, that the bare drawing or accepting a bill, makes a merchant for that purpose. Now if what is

Salk. 125. *Show*
125. 2 *Vent.*
295.

Fortesc. 281. 2
Ld. Raym. 1361.

* 3 and 4 Ann. c.
9. made perpetu-
al by 7 An. c. 25.

† 2 Lord. Raym.
1396, 1362.
Gilb. Cas. 93.

‡ 8 Mod. 363.

contended for on the other side should prevail, the public will be deprived of this great benefit ; for no man will take his bill as so much money in the way of trade, when he is to resort to one man for one part, and perhaps send out of the kingdom for the other, to a place where he has no correspondent. In the case of *Jocelyn v. Laserre*, which was in this court, Hil. 11. Ann. rot. 214, where the bill was to pay out of my growing subsistence, it was held, that in regard his growing subsistence might never amount to the sum drawn for, therefore this was not a bill of exchange within the custom of merchants, for nobody would take it upon such a contingency. And the cases of promissory notes since the * statute have gone upon the same reason. † *Smith v. Bobeme, Mich. 1 Geo.* in B. R. which was to pay money, or surrender a man to prison. And the case of ‡ *Appleby v. Bidele*, in B. R. Hil. 3 Geo. which was to pay so much to A, if I do not pay so much to B, and both these were held not to be within the statute, upon that only reason that they were not negociable.

Another inconvenience which naturally occurs upon this occasion is, that the drawee will insist to have the whole bill delivered up, when he pays but a part only. For according to the authors who treat of this subject, he can never charge the drawer, when they come to make up their accounts, with more than he has vouchers for under the hands of the drawer. In *Lex Mercatoria* 274, it is said, that if the bill be lost, the drawee cannot justify the payment, though he has a letter of advice. And this refutes all the expedients of indorsing part, or giving a special receipt for so much; because in neither of those cases will the drawee have any authority to produce under the hand
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of the drawer. If the drawer then refuses to allow what the other has paid, his only remedy will be to bring his action; and how he will be able to maintain it upon the custom of merchants, I must confess myself at a loss to find out, for he will want the necessary evidence to maintain such an action, which is the bill itself that was drawn upon him.

If this then will be the case, where he pays the money without taking up the bill, I must contend, that by all the rules of prudence and justice he may insist to have the whole bill delivered up to him, when he only pays part of it according to his acceptance.

Supposing him then in possession of the whole bill, I would consider in what a condition we have left the party to whom it was made payable. He must be supposed to have advanced a consideration adequate to the whole sum, and consequently is in justice intitled to his whole money of somebody or other. It will be said, that he may get what he can of the drawee, and then go back to the drawer for the residue. It is true he may do so, and the drawer may be a man of so much honour as to pay him every farthing. But what must he do when he finds he is mistaken in his man, when the drawer, (instead of ordering him the money, as he expected) shall tell him, "No, you have nothing to produce under my hand, and if you have been so foolish as to deliver up the bill, you must take it for your pains." I know of no remedy in this case, but what would be worse than the disease, and therefore the prudentest thing he can do will be to sit down by the loss.

And this will be so far from being a trick in the drawer, that it will be no more than what every prudent man will do. For if upon the

Bills of Exchange.

report of what has been done he should advance the residue of the money, yet still there is a bill standing out against him for the whole, upon which bill it cannot appear he has paid the money which the drawee had left unpaid. And whether in that case he would not afterwards be answerable for the whole, may be proper to be considered.

I have now done with what I had to offer in maintainance of the negative of the question I proposed to speak to, and shall therefore proceed to take notice of what was hinted at upon the former argument in behalf of the plaintiff in this case.

It was said, that the drawee may, (and very often does) accept to pay the money at a different time from what is appointed in the bill. I must admit he may do so; but surely that case can bear no proportion to this. It is not liable to any of the inconveniencies I mentioned; it is the same as if the bill had at first given him a longer time; and it is well known, that after acceptance a month or two will break no squares, where the man is good. With this further, that amongst merchants such an acceptance is esteemed a general acceptance to pay the money according to the tenor of the bill; besides *Molloy* says, that in such a case the bill must be protested, which cannot be done in our case.

Mol. B. 2. c. 10.
Sect. 20.

It was further urged to be highly reasonable, that the drawee should honour the bill as far as he had effects. I admit this to be reasonable, and perhaps it would not have been impossible for the plaintiff to have declared in such a manner, as to have charged the defendant to the amount of his acceptance. But we are upon the custom of merchants, and whatever might be reasonable in case of private

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vate property, will cease to be so, when it appears to be pregnant of so many inconveniencies to the public as I have mentioned. And if the plaintiff has it in his power to frame a case wherein he may do himself justice, that makes the argument stronger against suffering him to break in upon the public convenience for his private benefit. The policy of the law is, rather to let one man suffer, than produce a general inconvenience. But here we are to be led into the greatest inconveniencies, even in a case where there is no danger of the parties suffering in the least; for he has a remedy which stands clear of all these inconveniencies, and there will be no harm in leaving him to that.

It was said, that if the drawer (who is supposed to know what effects he has in the other's hands) by drawing for more, subjects himself to several actions, it is his own fault. The answer to this is, that the very drawing for more, destroys the presumption that he knew how the accounts stood. But amongst merchants, as I observed before, that is not the case, for they often honour one another's bill, where there are no effects at all.

But even admitting the drawer does not stand altogether clear of this objection, yet still this may be the case of one who cannot be supposed to know how the accounts stood between the drawer and the drawee; for it may happen this bill may be indorsed, and then the indorser is to be charged in the same manner as the drawer. The indorser will be liable to several actions, though he is no ways privy to any of the transactions between the indorsee and the drawee.

Upon breaking the case upon the former argument, a difference was taken between the
case

Bills of Exchange.

case of the acceptor and that of any other person ; that he should not come and discharge himself against his own acceptance, whatever the other might have done, as to refusing this partial acceptance. If this was his case only, it might be reasonable to extend this acceptance as far as it will go ; but the hardship is, that what is law in his case must likewise be law in the case of the drawer and indorser ; so that here are two innocent persons who are to be involved in the same common fate, and that is never to be suffered, especially when the drawee may be charged in another manner, which will not affect the drawer or the indorser.

But if this partial acceptance should be thought good within the custom of merchants, yet the plaintiff can never recover in this action, in regard to the manner in which he has declared.

My first exception is, that the plaintiff by his own shewing has brought his action too soon. This is a declaration of last Michaelmas term, and the acceptance is laid to be the 9th of *Dec.* 1717, to pay upon the 8th of *Feb.* following, in consideration whereof he did, the same day and year last mentioned, which was the 8th of *Feb.* 1717, promise to pay the money on the 8th day of *Feb. tunc proxime sequen.* Now there must of necessity be the intervention of a whole year between the 8th of *Feb.* 1717 and the 8th of *Feb.* following, and then the case is no more, than that the plaintiff complains, that the defendant, on the 23d of *Oct.* had not paid him a sum of money which of his own shewing was not become due till the 8th of *Feb.* following. If it were necessary to cite cases in maintainance of this acceptance, there are *Sid.* 373. *Vent.* 135.

Another

Another exception is, that the plaintiff has not made any request before bringing the action, which he ought to have done; for the merchant who accepts is easy to be found, but the party to whom the bill is made payable may only be a traveller, to whom the other cannot resort to pay the money. And this differs from the case of a bond, for there it is for the benefit of the obligor to save the penalty, so there needs no request to him, to do an act for his own benefit. It will be said, that the action is a request; but if it be, still it recurs to that question, whether a request at the time of bringing the action is sufficient; and it is plainly not so, for then it is a request to pay the money four months before it became due.

I shall trouble your lordship with but a word more, and it is this. The bill runs thus, "Pay this my first bill, my second not being paid," and therefore I must submit it, whether they ought not to have averred, that the second was unpaid. Indeed in the case of * *East v. Effington*, it was held well after a verdict, because if the second was paid, the jury could not find *assumpsit* as to the first; he was not to pay the first unless the second was paid; so the jury finding him bound to pay the first, that is an argumentative finding the second unpaid. But the court in that case inclined, it would have been ill upon a demurrer.

It will be said, that this should have been shewn for cause of demurrer; but this exception goes to the cause of action itself, and may as well be taken advantage of upon a general demurrer, as the want of setting out an attornment was in the case of † *Long v. Buckenridge*.

The whole, both with relation to the matter and the manner of this deed, may be reduced

* Carth. 510.
Salk. 130.
Ld. Raym. 810.
7 Mod. 16, 87.

† Gilb. Eq. Rep.
17. See 18 Vin.
Abr. 224. p. 17.

Bills of Exchange.

to this dilemma ; either this partial acceptance is good, or it is not. If it is good, yet the plaintiff has come too soon, without alledging what is necessary to make out his case, and consequently can never recover in this action : if it is not good, that alone will be sufficient to entitle us to judgment for the defendant.

Reeve, contra. I am no otherwise prepared to argue this cause, than by acquainting the court, that a gentleman has often attended to inform you, that it is practicable to protest a bill for non-acceptance of part, and then resort back to the drawer. As to the inconveniencies which are urged, they are as great of our side upon account of death or acts of bankruptcy. The drawee is not prejudiced ; and as to the drawer, if part is paid, his debt is so much lessened, which is a benefit to him.

As to the first objection to the declaration, that we have brought our action too soon, it runs, *in prædict. octavum diem Febr. tunc proxime sequentem* ; so to support the defendant, you will neglect *proxime sequentem*, and then it stands as a promise to pay in *Feb. 1717*, and the action is in *October* following.

2. No request was necessary, for upon the acceptance a duty arises, and this is not a collateral promise.

3. If the defendant had paid the second bill, he should have pleaded that matter in his discharge ; and as to the case of *East v. Esington*, that was against the drawer upon the first contract, but this is against the acceptor upon a new contract.

Strange replied. As to *prædict.* it does not make the sentence inconsistent with *proxime sequentem* ; for it is common to call the same day in a different year, the same day generally ; and here it is no more than that the party promises

mises on the eighth of *February*, in one year, to pay upon the same day in another year : and where a thing is gramatically right, the court will never reject it. It was held in the case of *Wyat v. Aland*, in B. R. Trin. 2 *Ann.*

Salk. 325.

They should have shewn the second bill unpaid, for it is in the nature of a condition precedent to their having any right to this action. As to the request, no debt arises upon the acceptance ; for an *indebitatus assumpsit* will not lie upon a bill of exchange. *Salk.* 125.

Powis, justice. Either party might have refused this partial acceptance, and they were at the same liberty to take it : neither could force the other to it ; but if both agree, *volenti non fit injuria*. The drawer trusts all to the discretion of the person to whom he gives the bill ; and if that person leads him into inconveniencies, who can help it ?

Eyre, justice. I think the declaration is well enough ; we will reject *proxime sequentem*, and then all is right ; there is no difference between the drawer and the acceptor ; for if he pays either of the bills, the drawer is not liable. Acceptance of one is so of both, though in fact it amounts to no more than an acceptance to pay the contents of one of them ; and payment of one is a discharge of both : so that the averment that the money was not paid upon the first goes to the second also, I searched, but could not find the record of *East v. Effington* ; and by my notes I find it went off immediately upon the answer that the verdict had cured it. The precedents are as this declaration. *Vidian Ent.* 31, 67.

Fortescue, justice. I think there is a difference between the drawer and the acceptor ; for the drawer is bound to pay all, the drawing being an actual promise ; but the acceptor is bound to pay but one, and no action can
be

* Salk. 128.
 Carth. 510.
 3 Bac. Abr. 606.
 Ld. Raym. 538.

be maintained but upon the very note which he accepts. There is another answer to the objection, that the action is brought too soon; and that is, that the plaintiff needed not set out any promise at all. **Starke v. Cheeseman, Lowther v. Conyers*, which was a promissory note; and they have left out *super se assumpsit*; and yet it was held well enough, for the law raises a promise. And this is likewise an answer to the want of request. In *Molloy*, and the other books, there is a whole paragraph about the partial acceptance of a bill of exchange; and they allow it to be good. So judgment was given for the plaintiff. *Wegerloff* and *Keene*.

What acceptance amounts to a general promise.

Salk. 129. 12
 Mod. 410. Ld.
 Raym. 574. 12
 Mod. 212. Carth.
 459. Ld. Raym.
 365.

What amounts to an acceptance, 12
 Mod. 411.

Executor must prove acceptance to be in the testator's life-time.
 12 Mod. 447.

Acceptance may be by parol. 7
 Mod. 87. Salk.
 130. 12 Mod.
 305. 2 Stra.
 817. 2 Ld. Raym.
 1542. Barnard,
 K.B. 87. 2 Stra.
 1000.

Acceptance after the time of payment elapsed, and a promise then to pay the money *secundum tenorem billæ præd.* is good, and amounts to a promise to pay the money generally. *Mitford v. Wallicot*.

If a bill be drawn on one at *Amsterdam*, and he does not care to accept it, but gets one here to do it, the party need not acquiesce; but if he does, the party here is bound. *Per cur.* Same case.

A bill of exchange was directed to *A*, or in his absence to *B*, and begun thus: *viz.* "Gentlemen, pray pay." The bill was tendered to *A*, who promised to pay it as soon as he should sell such goods. In an action for non-payment, it was objected that this was a conditional acceptance; but here the action being by an executor, and upon debt laid to be due to testator, *Holt*, chief justice, held it necessary to prove, that the acceptance was in the testator's life-time. *Anon.*

Bill of exchange may be accepted by parol, but not transferred, otherwise than by writing on the back, and that transfers the property by the custom of merchants. *East v. Essington*.

A

A foreign bill was drawn on the defendant, and being returned for want of acceptance, the defendant said, that if the bill came back again, he would pay it, this was ruled a good acceptance. *Car v. Coleman.*

What acceptance good. 3 Bac. Abr. 610.

The drawee wrote a letter to him in whose favour the bill was drawn, that if he would let him write to Ireland first, he would pay him; and this was held a good acceptance. *Wilkinson v. Lutwich.*

Lord Raym. 444. Stra. 648. 3 Bac. Abr. 610.

Acceptor of a bill drawn for a sum won at gaming more than the statute allows, may plead the statute against gaming against the person himself, but not perhaps against any indorsee for value received. *Hussey v. Jacob.*

Acceptor may plead statute against gaming. Carth. 356. 5 Mod. 175. Salk. 344. 12 Mod. 96. Holt, 328. 3 Keb. 254, 259. Comyn. 4. Lord Raym. 87. See 2 Ld. Raym. 1034, 1035. Acceptance after bill payable, 12 Mod. 410.

It was agreed that an acceptance, or negotiation, in *England*, after a bill becomes payable, shall bind the acceptor, or indorser, though not perhaps the original drawer. And for this was quoted *Pigot and Jackson's case* in *B. R. Hil. 9. W. III.* though it were an acceptance to pay *juxta tenorem præd.* as here argued. *Mitford v. Walcot.*

Custom of acceptance laid too general. Lutw. 891, 892.

In case, upon a bill of exchange, the plaintiff set forth a custom, *inter mercatores & alias personas*, that if a bill is indorsed, and accepted by a person on whom it is drawn, if any other merchant will pay the money to the indorsee, for the honour of the indorser, then the first drawer is chargeable to him; that *F*, the defendant, drew a bill upon *J. S.* for one hundred pounds, payable to *J. D.* that *J. S.* accepted the said bill, and *J. D.* indorsed it to *M. L.* and that *R*, the plaintiff, paid the money to *M. L.* for the honour of the said *J. D.* the indorser; and that thereupon *F*, the drawer, became liable to him, but had not paid the money, *ad damnum*, &c. the plaintiff had judgment

ment by *nil dicit*, &c. but it was reversed upon a writ of error in the Exchequer chamber, because the custom was laid too general; for it extended not only to merchants, but to all other persons whatsoever. *Fairly v. Roch.*

Acceptance for
the honour of the
drawer. Lutw.
896, 899. Lord
Raym. 575.

R drew a bill of exchange on *S*, payable to *B*; *S* refused to accept it, whereupon *B* protested it. *L*, for the honour of *R*, gave a note to pay the money at the day, if not paid by *R*: afterwards *B* indorsed *L*'s note to *C*, for value received: *C*, in like manner, indorsed it to *D*, and he to *E*, and he to *F*, all for value received. At the day of the return, *S* still refused to accept the bills; whereupyn *L*'s bill was protested. Then *M* and *N*, hearing of the protest of *K*'s bill, pay the money for the honour of *B*. But in action by *M* and *N* against *L*, the declaration does not say that they paid it to *F*, nor to whom they paid it, but only generally that they paid it. This matter was assigned for error, and that, for what appears, it might be paid not to *F*, the last indorsee, to whom alone it was due, but to another; and if so, the defendant remains still liable as to him. But, *per cur.* after verdict, it shall be intended that the payment was to the right person, especially it being laid to the *ex parte* of the plaintiff; which could not be if it had been paid to a stranger; and so the judgment of the *King's Bench* was affirmed in the Exchequer chamber. *Brunetti versus Leaven.*

12 Mod. 410.

If *A* draws a bill on *B*, who will not accept it, *C* offer to accept it for the honour of the drawer, the drawee need not acquiesce, but may protest; but if he does not acquiesce, *C* is bound *per Cur.* *Mitford v. Walcot.*

A bill

A bill of exchange was drawn upon the debtor at *Leghorn*, which he accepted; but by the law there, if a bill be accepted, and the drawer fails, and the acceptor hath not sufficient effects of the drawer in his hands at the time of the acceptance, the acceptance becomes void; and this happening to be the plaintiff's case, in order to discharge himself of the acceptance, he instituted a suit at *Leghorn*, and his acceptance was thereupon vacated by a sentence in that court. Afterwards the plaintiff returned to *England*, and was sued here at law upon this bill; and thereupon he exhibited his bill in this court for an injunction and relief.

King, lord-chancellor, was clearly of opinion, that this cause was to be determined according to the local laws of the place where the bill was negotiated; and the plaintiff's acceptance of the bill having been vacated, and declared void, by a competent jurisdiction; he thought the sentence was conclusive, and bound the court of Chancery here: and to this purpose he instanced the case of one *Hutchinson*, which was in 29 *Cer.* II. and is mentioned in *Sbo.* 6, where *Hutchinson*, having killed a person in *Spain*, was there prosecuted, tried and acquitted of the murder; and afterwards returning to *England*, he was indicted again for the same murder here; to which indictment he pleaded the acquittal in *Spain* in bar, and the plea was allowed to be a good bar to any proceedings here.

And upon the attorney-general's insisting, that the plaintiff might have taken advantage of this matter upon a trial at law, and therefore not relievable in a court of equity.

The chancellor declared, that if he was to try the cause at law, he would allow the
I plaintiff

A man cannot be sued on his acceptance of a bill of exchange abroad, after he has been discharged by the laws of that country. 2-*Stra.* 733. *Moseley* 1. *Sel. Cas. in Chan.* 69. 2 *Eq. Abr.* 476. p. 2.

plaintiff the benefit of this matter upon the trial. But as other judges might be of a different opinion, he would not put the plaintiff upon the difficulty and hazard of a trial. And he said he remembered a case which came before him in the lord mayor's court, when recorder of *London*; where a mariner sued in the admiralty court for his wages, and his lordship, as recorder, being doubtful whether he should allow the defendant to give the sentence in the admiralty court in evidence upon *non assumpsit*, asked the opinion of chief-justice *Holt*; who said, That whatever defeated the promise, might be given in evidence on *non assumpsit*; and, that the sentence in the admiralty court would be good evidence: and in this case a perpetual injunction was granted, to enjoin the defendant from suing upon this bill. *Burrows v. Femino*.

Acceptor cannot
set up forgery of
the bill. 2 Stra.
946. See Salk.
126.

In an action by the indorsee of a bill of exchange against the acceptor, it was held not to be necessary to prove the hand of the drawer; and the plaintiff rested on the proof of the acceptance. The defendant offered to prove it a forged bill, by calling persons who were acquainted with the hand of the drawer, and would swear they did not believe it to be his hand. But the chief-justice would not admit this, from the danger to negotiable notes, and because a man might, with design, write contrary to his usual method: and he strongly inclined, that even actual proof of forgery would not excuse the defendants against their own acceptance, which had given the bill a credit to the indorsee, who had a verdict. *Jenys v. Fowler et al.*

Action lies against
a servant upon a
bill drawn on him
and accepted ge-
nerally, tho' the
order is to place
it to the account

The plaintiffs were indorsees of a bill of exchange drawn from *Scotland* upon the defendants in these words:

“ At

“ At thirty days sight, pay to J. S. or or-
 “ der two hundred pounds value received of
 “ him, as *per* advice from *Charles Mildway*.
 “ To Mr. *Humphry Bishop*, cashier of the *York*
 “ *Buildings* company, at their house in *Win-*
 “ *chester-street*, *London*.

of the master. 2
 Stra. 955. Caf.
 temp. Hardw.
 136. 2 Barnard,
 K. B. 320.

“ Accepted 13 June, 1732, *per*

“ *H. Bishop.*”

This bill not being paid, an action was brought against the defendant upon his acceptance: and the defendant proved, that the letter of advice was addressed to the company; and that the bill being brought to their house, he was ordered to accept it, which he did in the same manner as he had accepted other bills. But Mr. *J. Page*, who tried the cause, directed the jury to find for the plaintiff, which they did accordingly.

And now, upon motion for a new trial, the court held, that the direction was right; for the bill on the face of it, imports to be drawn upon the defendant, and it is accepted by him generally, and not as servant to the company, to whose account he had no right to charge it till actual payment by himself; and this being an action by an indorsee, it would be of dangerous consequence to trade to admit of evidence arising from extrinsic circumstance, as the letter of advice. And they said, this differed widely from the case of a bill addressed to the master, and underwrote by the servant, where undoubtedly the servant would not be liable; but his acceptance would be considered as the act of his master. A bill of exchange is a contract by the custom of merchants, and the whole of that contract must

appear in writing. Now here is nothing in writing to bind the company, nor can any action be maintained against them upon the bill; for the addition of cashier to the defendant's name is only to denote the person with more certainty; and the *York Buildings* house is only to inform the order where the drawer is to be found: and the direction whose account to place it to, is for the use of the drawee only. And they compared it to the case in *Carth. 5. 2 Vent. 307*; where a bill was drawn payable to *Price* for the use of *Calvert*: and held, that the legal property was in *Price*: which is stronger than the present case. They said; it might be otherwise if the action had been by J. S. who was privy to the transaction; and it had appeared he tendered the bill as a bill on the company: but this plaintiff being a stranger, they could not consider those circumstances. The plaintiffs had their judgment. *Thomas et al. v. Bishop.*

What acceptance
of a bill of ex-
change is good. 2
Stra. 1152.

The defendant accepted a bill of exchange to pay it when consigned to him, and for which the bill was drawn, were sold; and the plaintiff counted upon the custom of the merchants. After a verdict for the plaintiff, it was moved in arrest of judgment, that this acceptance, depending upon the contingency of the sale of the goods was not within the custom of merchants, or negotiable. But the court, upon consideration, held it good: for though the plaintiff might have refused to take such an acceptance, and have protested the bill; yet no body can say he might not submit to it; and it will affect trade, if factors are not allowed to use this caution, when bills are drawn before they have an opportunity to dispose of the goods. A man who is drawn upon to pay at ten days sight, may accept for thirty. *Molloy*

304. Though the other might protest the bill. *Salk.* 129. *Cumb.* 452. *Smith* versus *Abbot*.

Case by indorsee of a bill of exchange against the defendant as acceptor, who, on tender of the bill, wrote, "Messieurs *Caswal* and *Mount*, pay this bill when due, for *Thomas Chitty*." The bill fell due on the second of *January*, 1741. The bankers paid till the ninth at two; and on the twenty-first of *January*, the money was demanded of the defendant.

Acceptance to pay at a goldsmith's must be tendered within the same time that a note must.
2 *Stra.* 1195.

For the defendant it was insisted, that the plaintiff had given such a credit to the bankers as to make it his loss; and they compared it to the common case of a note, or draught kept.

For the plaintiff it was said, that there was no limited time, but that of the statute of limitations, to sue the acceptor; and that the plaintiff cannot come in as a creditor of the goldsmith's, because they have done nothing to make themselves liable.

The chief justice held, that it was the loss of the plaintiff, who, though he might have refused to take such an acceptance, yet had now agreed to it; and it was to all purposes in the nature of a draught, which is always considered as actual payment, when a reasonable time to receive it in is elapsed. *Bishop v. Chitty*.

Assumpsit on the custom of merchants against the defendant as acceptor of a bill of exchange. The defendant pleaded infancy; to which the plaintiff demurred, alledging, that where contracts are established by custom, as in the binding one's self apprentice, infants shall be bound as well as others.

Acceptor being an infant not liable. *Sel. Cas. of Evid.* 17.

But by the court. Here the infant is not bound: the case of an apprentice depends on custom, but the law of merchants is part of

Bills of Exchange.

the common law; wherefore judgment for the defendant. *Williams v. Harrison.*

An acceptance by
letter good. law of
bills. 51. pl. 19.
3 Bac. Abr. 610.
S. P.

The bill was, for satisfaction of a bill of exchange, drawn upon the defendant, and accepted by him. Pending the suit, the original defendant died, and it was revived against his executors, praying also a discovery of assets, and to be satisfied thereout. On the proofs some question was made, Whether the acceptance was sufficient to charge the defendant? and, Whether the plaintiff, by keeping the note about ten days after it became due, without coming to the drawee for the money, had not discharged the acceptor: but it was insisted for the defendant, as a previous matter, that the plaintiff had a plain remedy at law, that his case depended upon facts that ought to be tried by a jury, and not be determined in this court.

Hardwicke, lord-chancellor. Regularly the plaintiff ought to pursue his remedy at law, and not in this court: and, if the case stood as it did at first, I should certainly dismiss the bill: but the bill of revivor, praying a satisfaction out of assets, and a discovery of assets, it is made a case of which this court takes cognizance; and then the prayer of satisfaction is an incident that follows with it. I have therefore no doubt but that the plaintiff is proper in praying a remedy in this court. But, with regard to the acceptance, if there were a doubt of it, as to the fact, or whether in law what has been done amounts to an acceptance, it might be still necessary to send the parties to a trial at law; but I think there is no doubt of either. The testator, when the bill was brought to him, received it, entered it in his book, according to his course of trade; and the entry is proved to have been made under a particular

particular number, and wrote that number under the bill and returned it. Now it is said to be the custom of merchants, that if a man underwrites any thing to a bill, it amounts to an acceptance. But if there were no more than this in the case, I should think it of little avail to charge the defendant. But what determines me is the testator's letter; and I think there can be no doubt, but that an acceptance may be by letter; and it has been so determined: there was a doubt, whether a parol acceptance be good; lord chief justice *Eyre* said it was, lord *Raymond* held the contrary: and there was a like case came on before me at *nisi prius*; * *Lumely* and *Palmer*; and I had a case of it for * 2 Stra. 1000. the opinion of the court, and it was several times argued, and at last solemnly determined, that such acceptance is good; much more therefore an acceptance by letter.

As to the plaintiff's being entitled to interest, I think it a clear case that he is, though no protest has been made; for that is necessary only to entitle the payee to damages against the drawer, and all the damage that can be had in such a case, is the interest.

Decree for the defendant to pay the note with interest, at the rate of four *per cent*. The plaintiff to pay the costs to the time of the bill of revivor, and after each party to bear their own costs. *Powell* and *Moliere*.

If a book-keeper, or servant, or other person, having authority, or usually transacting business of this nature for the master, accept a bill of exchange, this shall bind such master.

“ If any person shall falsely make, alter, forge or counterfeit, or cause, or procure, to be falsely made, &c. or willingly act, or assist, in the false making, &c. any acceptance of any bill of exchange, with intention to defraud any

Book-keeper, servant, &c. may accept a bill of exchange. 3 Bac. Abr. 611. Mol. b. 2. c. 10. sect. 27. Marius 104. Styl. 370. Acceptance after the day of payment is usual and good. Ld. Raym. 364, 574.

Bills of Exchange.

of forging the acceptance of bills of exchange, shall suffer death. 7 Geo. II. c. 22. person whatsoever; or shall utter or publish, as true, any false, &c. acceptance of any bill of exchange, with intention to defraud any person, knowing the same to be false, &c. such person shall be deemed guilty of felony, without benefit of clergy."

8. Indorfor, Indorsee, and Indorsement.

Where there are several indorsers and indorsees. See Lutw. 885, 888.

A drew a bill of exchange upon B, payable to C; then B accepts the bill; C indorses it to D. Now, by this indorsement by C to D, B is discharged of any payment as to C; and if D indorses it over to E, then B is discharged of any payment to D; but if D pays the money to E, then D by this payment becomes again intitled to receive the money of B, and at such time no other, whether E or C, is intitled to bring any action against B, but D only: so, if C pays the money to D, then B is discharged as to D, but C becomes newly intitled, and B is again liable as to him, but discharged against D and E. *Death v. Serwonters.*

Recovery by indorsee against the drawer without satisfaction, a bar to an action by him against a mesne indorfor. Comb. 4. 3 Mod. 86. 2 Show. 441, 494. Skin. 255.

Lutw. 878, 882.

Recovery by indorsee against the drawer, without satisfaction, was adjudged in *B. R.* to be a bar to an action brought by him against a mean indorfor: but this judgment was afterwards reversed in the Exchequer chamber. *Claxton v. Swift.*

Judgment was reversed because there was not any satisfaction; for the court were of opinion, that this case differs from the case of two trespassors, and is rather to be resembled to two debtors, by a joint and several obligation; because, by the custom, the first drawer of the bill, and every indorfor thereof, is liable to the payment of a sum certain to the last indorfor, though the action be to recover by way of damages.

Ruled

Ruled, that where a bill is drawn payable to W. R. or order, and he indorses it to B, who indorses it to C, and he indorses it to D, the last indorsee may bring an action against any of the indorsors, because every indorsement is a new bill, and implies a warranty by the indorser, that the money shall be paid. *Williams v. Field.*

All indorsors liable to last indorsee. 3 Salk. 68. Skin. 343. Lord Raym. 743. Gilb. Evid. 121.

M, a goldsmith, drew two bills on J. S. payable to L, the defendant, who, on the nineteenth of October, indorsed them to H. The plaintiff, J. S. accepted the bills, and paid, by the order, and on account of L, eight hundred pounds in money, and gave another bill for the residue. Afterwards, the same day, H, the plaintiff, being also a goldsmith, received the money of M, upon other bills, and might have received the money on this bill, but did not demand it; and the night following M broke. The question was, Whether L, the defendant, who was the indorser, is liable? *Holt*, chief justice, held, that, by the acceptance of this bill by the plaintiff, the indorser was not discharged; for while the bill is in agitation, if every indorser is as much liable as the first drawer, and cannot be discharged by the acceptance of the bill, without actually paying of the money; but by custom the indorser is only liable in default of the first drawer; but if there is any neglect in the indorsee to receive it in convenient time, and if within that time the drawer becomes insolvent, then the indorser is discharged. *Hill v. Lewis.*

H indorsed two bills in satisfaction of a debt, and before receipt the drawer broke. Whether indorser could be charged? Salk. 132. Skin. 410.

Though a bill be without the words, *or to his order*, yet the indorsement of such bill is good, or of the same effect, between the indorser and indorsee, to make the indorser charge

Assignment of bill not payable to order, charges the indorser, not the drawer, *ibid.* Skin. 411.

Bills of Exchange.

chargeable to the indorsee, *per Holt*, chief justice. *Same case.*

Blank indorsement. *Salk.* 126.
12 *Mod.* 192.
Salk. 130. See
Lord Raym. 444.
12 *Mod.* 244.

Indorfor liable, tho' bill forged. *Lord Raym.* 443, 444.

Indorsement may be by parol. 12 *Mod.* 564.

What proof of an indorsement is sufficient. *K. B.* 399.

Indorfor of a foreign bill of exchange may be charged without resorting to the drawer. *Stra.* 441, 515. See *Stra.* 649, 2 *Stra.* 187. *contra* as to promissory notes. But see p. 124. wherein it seems settled, that the indorsee of an inland bill of exchange need not,

Blank indorsement, does not actually transfer the property without some further act, *per Holt*, chief justice. *Clark v. Pigot.*

If the action be brought against the indorfor, it is not necessary to prove the hand of the drawer; for though it be forged, the indorfor is liable, *per Holt*, chief-justice. *Lambert v. Oakes.*

If a man has a bill of exchange, he may authorize another to indorse his name upon it by parol; and when that is done, it is the same as if he had done it himself, *per Holt*, chief justice. *Anon.*

To prove an indorsement over of a bill of exchange, it was offered, that the defendant had himself confessed that he was come to town to hasten on the trial of an action that was brought against him upon an indorsement that he had made on a bill of exchange: and the counsel now said, that this cause was brought down by proviso; so that it is strong evidence, that it is for the same matter: and the chief justice, at the sitting at Guildhall, allowed this to be good evidence of the indorsement. *Dabe v. Lubeck.*

Case upon a foreign bill of exchange by the indorsee against the indorfor; and on a general demurrer it was objected, that they had not shewn a demand upon the drawer, in whose default only it is, that the indorfor warrants: and because this was a point unsettled, and on which there are contradictory opinions, in *Salk.* 131 and 133, the court took time to consider of it.

And on the second argument they delivered their opinions, that the declaration was well enough.

enough. The design of the law of merchants in distinguishing there from all other contracts, by making them assignable, was for the convenience of commerce, that they might pass from hand to hand in the way of trade, in the same manner as if they were *specie*. Now to require a demand upon the drawer, will be laying such a clog upon these bills, as will deter every body from taking them. The drawer lives abroad, perhaps in the *Indies*, where the indorsee has no correspondent to whom he can send the bill for demand; or, if he could, yet the delay would be so great, that nobody would meddle with them. Suppose it was the case of several indorsements, must the last indorsors travel round the world before he can fix his action upon the man from whom he received the bill? In common experience every body knows, that the more indorsements a bill has, the greater credit it bears: whereas, if those demands were all necessary to be made, it must naturally diminish the value, by how much the more difficult it renders the calling in the money; and as to the notion that has prevailed, that the indorsor warrants only in default of the drawer, there is no colour for it; for every indorsor is in nature of a new drawer, and at *nisi prius* the indorsee is never put to prove the hand of the first drawer, where the action is against an indorsor. The requiring a protest for non-acceptance, is not because a protest amounts to a demand, for it is no more than a giving notice to the drawer to get his effects out of the hands of the drawee, who, by the other's drawing, is supposed to have sufficient wherewith to satisfy the bill.

in an action against the indorsor, prove a demand of the money of the drawer.

Upon the whole, we are of opinion, that, in the case of a foreign bill of exchange, a demand upon the drawer is not necessary to make

make a charge upon the indorfor; but the indorsee has his liberty to resort to either for the money; consequently the plaintiff must have judgment. *Bromley v. Frazier.*

Indorsee of part of a bill must shew the other part satisfied before he can bring action. Salk. 65. Carth. 466. 12 Mod. 213. Id. Raym. 360. See head, "Actions, Declarations, and Pleadings."

Indorsee must demand the money of the drawee. Salk. 127. 12 Mod. 244. Id. Raym. 443.

Demand must be subsequent to the indorsement. Ib.

Indorsee of an inland bill of exchange, in an action against the indorfor, need not prove a demand of the money from the drawer. Law of Bills, 70. pl. 17.

Indorsee of part of the sum in a bill of exchange cannot bring action, without shewing the other part to be satisfied. *Hawkins v. Cardee.*

Indorsee must prove, that he demanded it of the drawer, or him to whom it was drawn, and that he refused to pay it; or that he sought him and could not find him; for otherwise he cannot resort to the indorfor. *Lambert v. Pack.*

The demand must be proved subsequent to the indorsement; for if it was precedent, he could only act as servant to the indorfor; and so the demand insufficient to charge the indorfor. *Lambert v. Pack.*

An action was brought by the plaintiff against the defendant, as indorfor of an inland bill of exchange for one hundred pounds drawn at forty days sight by one *Carrick* upon one *Dodd*, in favor of the defendant, who indorsed it to the plaintiff. *Dodd* accepted the bill, but did not pay it; upon which it was protested by the plaintiff; all which was proved to the jury: but it did not appear he had notice of non-payment before this action was brought, or that any application was first made to him for payment. And this matter being objected by the defendant's council, and the insisting that for want of such notice, or demand, or due diligence used for that purpose, the plaintiff must be non-suited, the jury gave a verdict for the plaintiff subjected to the opinion of the court; and as this was a point unsettled, and many contradictory opinions thereon, as appears from the several preceding cases, the court took time

time to consider of it; and this term unanimously were of opinion, that, in the present case, it was not necessary to demand the money from the drawer, or to use any diligence for that purpose, or to give notice of non-payment by the drawee. That a bill of exchange was an order or command given by the drawer on or to the drawee (who has, or is supposed to have, effects of the drawer in his hands) to pay a sum of money to a third person, that when the bill is accepted, the drawee is become the principal debtor, and the drawer is liable only in default of the drawee; and if due diligence be not used to get the money from the acceptor or drawee, and notice of his non-payment given in convenient time to the drawer, the drawer shall not be liable; for if it should be otherwise, and the person upon whom the bill was drawn should become insolvent, without such due diligence used by the payee, or person to whom the bill is payable, to demand payment from the drawee; or without his giving the drawer timely notice of the non-payment, then would the drawer unreasonably suffer through the laches of the payee, having no intimation to call in his effects before the drawee became insolvent.

That when a bill of exchange is indorsed by the person to whom it is made payable, it is become a new bill, and the indorser is in the place of the drawer; and therefore, if the indorsee uses due diligence to get the money from the acceptor, and is refused payment, then the indorser, who has put himself in the place of the original drawer, upon notice of such non-payment, is become liable immediately, but not otherwise; in like manner, and for the same reason, that the original drawer would have been, in the like case, had there

Bills of Exchange.

there been no indorsement: and the indorsee is not obliged to make any demand upon the drawer, or to give him any notice; for he does not trust the drawer (who may not perhaps be known to him): the indorser is his debtor, and not barely a warrantor or security for the payment of the money.

That there was no difference between foreign and inland bills of exchange, except in the degrees of the conveniency: and as to foreign bills, this matter has been determined before in *Strange*, 441. The reason of the judgment there given was for the inconveniences that would ensue to commerce in general, from the discredit it would bring upon bills of exchange to be thus clogged with a necessity of giving such notice, and making a demand on the original drawer. Now every inconvenience attending a foreign bill holds to a great degree, though not equally in respect to an inland bill, if a person should be obliged perhaps in several remote parts of the kingdom, to enquire after and find out the drawer: and therefore, in this case, it was not necessary to prove any enquiry after, or demand upon, the original drawer; or any notice of the non-payment to him.

That what gave rise to the seeming contrariety of opinions upon this point, is the confused manner in which cases upon inland bills of exchange, and promissory notes, are reported and blended together. There is a strong resemblance between a promissory note indorsed and an inland bill of exchange; and the law should be settled on the analogy between them.----Whilst a promissory note remains in its original state without indorsement, it bears no resemblance to an inland bill of exchange; but when it is indorsed to a third person

person the similitude begins; for then the maker of the note is in the same situation with the drawer or acceptor of the bill of exchange; and the indorsee of either bill or note must demand the money from the acceptor of the bill or maker of the note, before an action can be brought against the indorser; that this was determined, with respect to the maker of a note, in the Court of Common Pleas, as cited in *Strange*, 1087; that where *Holt* said, in *Oakes's* case, reported in Lord *Raymond*, 443, that the indorsee must demand, or endeavour to demand, the money from the maker of the note before he can sue the indorser; and added further, "The same law, if the bill was drawn upon any other person, payable to O, or order." He does not mean, that the demand must be first made on the drawer of the bill of exchange, before the indorsee can sue the indorser; but upon the person who is in the same situation with the drawer, or maker, of the promissory note, who is the real debtor; and this is the acceptor of a bill of exchange.

That this opinion of *Holt*, which, thus construed, agreed with the present opinion of the court, was misunderstood and confused in *Salk.* 127, (which is manifestly a wrong collection from *Holt's* opinion in *Oakes's* case) where it is said that the indorsee of a bill of exchange must, in an action against the indorser, prove that he demanded the money from the drawer, or him upon whom it was drawn, and that he refused to pay it, or else that he sought him, and could not find him; that there was the same mistake in 12 *Mod.* 244; and that the confused and short notes taken of these and other cases, were the true occasion of all the contrariety of opinions on this point.

And

Bills of Exchange.

And that, upon the whole, in an action by the indorsee of an inland bill of exchange against the indorfor, he must prove a demand, or due diligence used to make it, upon the acceptor, or person upon whom the bill was drawn: and in an action by the indorsee of a promissory note against the indorfor, he must prove a demand made, or due diligence used to make it, from the maker of the note, in the King's Bench, *Michaelmas* term, 1758. *Heylins* and *Adamson*.

If a bill be drawn, payable to J. S. or order, the indorsee may bring the action. *Cog's* case.

Indorsee may bring action on bill payable to J. S. or order
Comb. 466. 3
Salk. 67, 68.

Indorsement, what it is, and how to be made.
Mol. b. 2. c. 10
sect. 27 3 Bac.
Abr. 609. 7
Mod. 86, 87.

Indorsement is a term known in law, which, by the custom of merchants, transfers the property of the bill to the indorsee, and is usually made on the back of the bill, and must be in writing; but the law hath not appropriated any set form of words, as necessary to this ceremony; and therefore it hath been held, that if a man write on the back of a bill of exchange, this is to be paid to J. S. or, the contents of this bill is to be paid to J. S. and * sets his hand to it, this is a good indorsement.

* It need not be shewn that it was subscribed. Salk. 130.

Indorfor may bring an action notwithstanding his indorsement.
Salk. 126. Mol. b. 2. c. 10. sect. 27.

So if A, having a bill of exchange, writes his name on the back of it, and sends it to J. S. his friend, to get it accepted, which is done accordingly; A, notwithstanding his name, may bring an action against the acceptor; although objected, that the property was transferred to J. S. for J. S. had it in his power, either to act as servant or assignee; and if he had filled up the blank space, making the bill payable to him, that would have witnessed his election to have received it as indorsee; but that being omitted, his intention is presumed to act only as servant to A, whose
name

name he would use only in order to write the acquittance over it.

A bill payable to a man's order is payable to himself, and he may bring an action thereon, averring that he made no order, &c. Bill payable to order Salk. 130. Comb. 101.

So, where a bill of exchange was indorsed in this manner, "Pay the contents of this bill unto the order of J. S." who brought his action as indorsee, averring he had made no order to any body to receive the money; and on demurrer, for that J. S. could not maintain an action, because the indorsement was not to him, but to his order, the court held the action well brought against the indorser, and that, among tradesmen, this form of indorsement is commonly used, although it is intended to be made payable to the person whose order is mentioned. *Fisher versus Pomfret.* Carth. 403.

As to the indorsing of bills, a difference has been made between a bill payable to J. S. or bearer, and J. S. or order; that the first is not assignable by the contract, so as to enable the indorsee to bring an action if the drawer refuse to pay, because there is no such authority given to the party by the first contract; and the effect of it is only to discharge the drawee if he pays it to the bearer, though he comes to it by trover, theft, or otherwise: but when the bill is payable to J. S. or order, there an express power is given to the party to assign, and the indorsee may maintain an action. Bill payable to bearer, or order; their difference as to indorsements Salk. 125. 3. Lev. 299. Skin. 343. Salk. 133. Comb. 204. 466.

Also, though an assignment of a bill, payable to J. S. or bearer, be no assignment to charge the drawer with an action on the bill, yet it is a good bill between the indorser and indorsee; and the indorser is liable to an action Indorsement in nature of a new bill. Salk. 125, 133. Skin. 343, 411.

tion for the money, for the indorsement is in nature of a new bill.

Custom as to bills payable to bearer. 3 Lev. 299. Salk. 125.

So it hath been adjudged, that an indorsee of a bill, payable to J. S. or bearer, may maintain an action against the drawer, on alledging a special custom, that such bill should bind him; which custom is so found, or confessed by the defendant.

Bill purchased at discount. Salk. 128. sect. 12. Mod. 244. Lord Raym. 443, 444.

Also, in cases of bills purchased at a discount, there is said to be this difference, that if it be a bill payable to A, or bearer, it is an absolute purchase; but if to A, or order, and it is indorsed blank, and filled up with an assignment, the indorser must warrant it as much as if there had been no discount.

Order of indorsee may sue on a general indorsement to him only. Stra. 557. Feme covert cannot indorse a bill of exchange. Stra. 516. Executors or administrators may indorse them. 2 Bar. Not. C.P. 137. 2 Stra. 1260.

Upon a case made at *nisi prius coram Pratt*, chief-justice, it appeared, that the plaintiff had declared, on an indorsement made by *William Abercrombie*, whereby he appointed the payment to be to *Louisa Acheson*, or order; and upon producing the bill in evidence, it appeared to be payable to *Abercrombie*, or order; but the indorsement was only in these words, "Pray pay the contents to *Louisa Acheson*;" and therefore it was objected, that the indorsement not being to order did not agree with the plaintiff's declaration.

But, upon consideration, the whole court were of opinion, it was well enough, that being the legal import of the indorsement, and that the plaintiff might upon this have indorsed it over to another, who would be the proper order of the first indorser. *Judicium pro querente. Acheson v. Fountain.*

What averment necessary in decl. on an indorsement. Salk. 130. 7 Mod. 86. 2 Lord Raym. 810.

Case upon a bill of exchange, the plaintiff declared, upon the custom of merchants, upon a bill directed to the defendants; and shews, that the bill was indorsed by the drawer, *indorsavit*

dorsavit super billam illam contenta billae illius fore solvenda to the plaintiff, &c. upon *non assumpsit* pleaded, verdict for the plaintiff, And Mr. Dee, for the defendant, moved in arrest of judgment, that the indorsement shewn in the declaration is not such as will transfer the property of the bill, and therefore the plaintiff is not entitled to this action, *sed non allocatur*; for, *per curiam*, it is aided by verdict, as want of attornment in debt, for rent, by the assignee of the reversion, is aided by verdict; and judgment was given for the plaintiff. *East v. Esington.*

“ If any person shall falsely make, forge, or counterfeit, or cause, or procure, to be falsely made, &c. or willingly to act, or assist, in the false making, &c. any indorsement or assignment of any bill of exchange, with intention to defraud any person whatsoever; or shall utter, or publish as true, any false, &c. indorsement or assignment of any bill of exchange, with intention to defraud any person, knowing the same to be false, &c. such person shall be guilty of felony without benefit of clergy.”

Forging indorsement of bill of exchange, death. 2 Geo. II. c. 25. sect. 1. made perpetual by 9 Geo. II. c. 19.

10. *Of Bills payable to Bearer.*

A, by a note under seal, promised to pay to the bearer thereof, upon the delivery of the note, one hundred pounds, and avers, that it was delivered to A by the bearer thereof, and that the plaintiff was so. The court said; that the person seems sufficiently described at the time that it is made a deed, which is at its delivery, and by the delivery he expounds the person before meant, as when a merchant promises to pay to the bearer of the note, any one

Any person is entitled to receive the money on a bill payable to bearer. 2 Show. 160, 161.

that brings the note shall be paid: but *Jones*, justice, said that it was the custom of merchants, that made that good. *Shelden* versus *Hentley*.

Assignee of such a bill must not sue in his own name. 3 Salk. 67, 68. Comb. 466.

Ruled, that where a bill is drawn payable to W. R. or bearer, an assignee must sue in the name of him to whom it was made payable, and not in his own name; for if the bearer was allowed to sue in his own name, then a stranger, who by accident may find the note, if lost, might recover; but if it is made payable to W. R. or order, there an assignee may sue in his own name, because the order must be made by indorsement, or the like, to shew the drawer's consent. *Nicholson v. Seldnith*.

Bill payable to bearer, where the receipt of it shall be tantamount to the receipt of the money. 12 Mod. 241. Comyn. 57. Ld. Raym. 442.

Bellamy gave a bill of exchange, payable to N, or bearer: N went and negotiated it with the Bank at the usual rate of interest. After this the Bank received one hundred pounds of *Bellamy*, and after that demanded the money due on the bill of a servant of B, who did not pay it; and after *Bellamy* failed, and the Bank brought an *assumpsit* against N for the money, and on the general issue a verdict for the plaintiff and a new trial granted, the verdict being against law for whatsoever may be the practice among the bankers, the law is, that if a bill or note be payable to one, or bearer, and he negotiates the bill, and delivers it for ready money paid to him without any indorsement on the bill, this is a plain buying of the bill; as of tallies, bank-bills, &c. but if it be indorsed, there is a remedy against the indorser. But *Holt* laid the rule thus: if a man gives such a bill for money not due before without indorsement, it is a sale of the bill. The governor and company of the Bank of *England v. Newman*.

If a bill be payable to A, or bearer, it is like so much money paid to whomsoever the bill is given; that, let what accounts or conditions soever be between the party who gives the note and A, to whom it is given, yet it shall never affect the bearer, but he shall have his whole money. *Crawley v. Crowther.*

Bill payable to bearer like ready money. 2 Freem. 258.

II. When payable.

In an action upon an inland bill of exchange, brought by the indorsee against the drawer, it appeared the bill was payable on the fourteenth of *May*: that, upon a promise of payment, the indorsee gave him to the eighteenth, from thence to the twentieth, thence to the twenty-fourth, and from thence to the seventh of *June*, when the acceptor failed; and there being no notice to the drawer, the chief justice held it to the loss of the indorsee. *Strange pro* defendant. *Gee v. Brown.*

2 Stra. 792.

A bill was drawn, payable at six days sight, and presented and accepted on the eighth of *February*, which made it payable on the fourteenth, and the three days of grace brought it to the seventeenth, which was a *Saturday*, and the acceptor stopt payment on the *Tuesday* following, before which the bill was not tendered; and upon this evidence it was left to the jury, who were of opinion, that the drawer was discharged at the end of the three days of grace. *Coleman v. Sayer.*

Ibid. 829. Barnard. K.B. 303.

A bill was made payable ten days after sight. *Powell and Nevil*, justices, held, that the day ought to be included, so that the day whereon the bill was shewn, shall be reckoned one of the ten. But *Treby*, chief justice, *contra*. But notwithstanding, because his brothers were of a con-

Bill payable ten days after sight the day of sight excluded. Lord. Raym. 280. Barnard. K.B. 303.

a contrary opinion, he awarded that the writ should stand, and that the defendant should answer over. *Bellaffes v. Hester*.

When foreign bills payable. Salk. 128.

Time of demand for foreign bills is three days, and no allowance is to be made for Sundays and holydays, *per Holt*, chief-justice. *Lambert v. Pack*.

3 Days of grace allowable. Barnard. K.B. 303.

Three days of grace are allowable by the custom of *London*, as well where bills are payable at certain days after sight, as where payable upon sight, *per Holt*, chief justice. *Coleman v. Sayer*.

And upon inland as well as foreign bills. Ibid. 2 Stra. 829. But *Ld. Raym.* 574, says, Bill is payable when due without days of grace.

A question was, Whether three days of grace are allowable upon inland bills as well as upon foreign ones; or, whether only a reasonable time? The common serjeant, and the foreman of the jury, said, that the constant practice of the city was, to allow them in one case as well as the other; upon which the chief justice said, that then he would not alter it, though he observed, that he remembered two cases, one in lord chief justice *Kelynge's* time, the other in Lord *Holt's*, where they were both of opinion, that in inland bills only it is a reasonable time; and what that is, the jury ought to determine. *Same case*.

12. Actions, Declarations, and Pleadings.

Debt lies not on a bill of exchange. *Hardw.* 485, 487. *Mod.* 286. *Vent.* 152. *Freem.* 14. 2 *Lutw.* 1594. *Lev.* 298. See *Gilb. Treat. of action of debt.* 364. 2. *Ld. Raym.* 1035. *Gilb. Evid.* 113.

An action of debt will not lie upon a bill of exchange accepted against the acceptor; but a special action of the case must be brought against him, because the acceptance does not create a duty, no more than a promise by a stranger to pay, &c. if the creditor will forbear his debt; and he that drew the bill continues debtor, notwithstanding the acceptance, which

which makes the acceptor liable to pay it, and the custom does not extend so far as to create a debt, but only makes the acceptor *onerabilis* to pay the money; wherefore and because no precedent could be produced, that an action of debt had been brought upon an accepted bill of exchange, judgment was arrested.

Anon.

Assumpsit lies on a bill of exchange accepted, *per cur.* in case of the city of *London v. Gorce.*

An assumpsit lies
Vent. 298. See
Skin. 346.

A general *indebitatus assumpsit* does not lie on a bill of exchange, but the party ought to declare specially on the custom of merchants.

Indeb. Assump.
does not lie. 2
Show. 9.
12 Mod. 37.
Salk. 125.

Frederick v. Cotton.

A general *indebitatus assumpsit* will not lie upon a bill of exchange for want of consideration; but a bill is but evidence of a promise, and so but *nudum pactum*, and therefore he ought to bring a special action upon the case, upon the bill and custom of merchants, or else a general *indebitatus assumpsit* for money received to his use, *per Holt*, chief justice. *Hodges v. Steward.*

Skin. 346.
Comb. 204.

Indebitatus assumpsit lies not against the acceptor of a bill of exchange, because his acceptance is but a collateral engagement; but it lies against the drawer himself, for he was really a debtor by the receipt of the money, and debt will lie against him. *Hart's case.*

Indeb. Assump.
lies not against
acceptor but it
does against the
drawer. Salk. 23.

Assumpsit upon a bill of exchange. The plaintiff declares, that *secundum consuetudinem et usum mercatorum*, the acceptor is bound to pay, &c. without shewing the custom at large; and the defendant demurred, and it was adjudged for the plaintiff, and *per curiam* it is a better way, than to shew the whole at large. *Soper v. Dibble.*

Declaration on a
bill of exchange
without setting
forth the custom.
Ld. Raym. 175.

Case. The plaintiff declares, *quod infra hoc regnum Angliæ* there is, and time whereof, &c.

Action against a
joint trader, who
subscribed a bill

for himself and
partner. Lord
Raym. 175.
Salk. 126. Mol.
B. 2. c. 10. Sect.
29.

hath been a custom, that if two merchants are partners, jointly merchandizing together, and the one of them subscribes a bill for the payment of money by him and his partner, mentioned there to another or his order, that then both the partners are bound by the subscription of that single person; and that if the person to whom this bill is payable, indorses it payable to any other person, that then those partners ought to pay such bill upon notice, to him to whom it is made payable; then the plaintiff shews, that J. S. and the defendant *Hall* were partners jointly merchandizing, and that J. S. subscribed a bill of one hundred pounds payable to *Hutchins*, or his order, by himself and his partner, and that *Hutchins* indorsavit billam prædictam solubilem to the plaintiff, that the defendant had notice thereof, and upon demand did not pay, &c. The defendant demurred.

1. Exc. That the declaration being *per consuetudinem Angliæ*, &c. was ill, because the custom of *England* is the law of *England*, of which the judges ought to take notice without pleading. *Sed non allocatur*. For though heretofore this has been allowed, yet of late time it has always been over-ruled; and in an action against a carrier it is always laid *per consuetudinem Angliæ*, &c.

2. Exc. Though *Lex mercatoria* is part of the law of *England*, yet it is but a particular custom among merchants, and therefore it ought to be shewn in *London*, or some other place, *sed non allocatur*. For the custom is not restrained to any particular place; and in *Herdr.* 485, it is laid as here.

3. Exc. It is not said, that the said J. S. promised for the defendant and himself upon the account of trade, and it may be, that this was for rent or some other thing, for which the
partner

partner is not liable. *Sed non allocatur.* For the plaintiff having declared so specially upon the custom of merchants, it shall be intended, this was for merchandizing, especially since the defendant has demurred generally; and if the case had been otherwise, the defendant might have pleaded it.

4. Exc. That the declaration is, that *Hutchins indorsavit billam prædictam solubilem* to the plaintiff, which is nonsense; for it ought to be, that he indorsed the bill, that the defendant should pay, &c. *Sed non allocatur.* And judgment given for the plaintiff. *Pinkney v. Hall.*

Assumpsit for forty pounds. The plaintiff declares upon a bill of exchange for twenty pounds, payable ten days after sight, and that the bill was seen by the defendant and accepted the fifth of *May*; and then he shews another *assumpsit* for the other twenty pounds, &c. The defendant craves *oyer* of the original, and upon that prays that the writ may abate *quoad primam promissionem*, because the original bears *teste* the 15th of *May*, and the bill was not payable until ten days after sight; *et quoad alteram promissionem*, he pleads in bar without defence. The plaintiff demurs. It was argued by the defendant's council, that if the bill be payable ten days after sight, the day of sight shall be taken exclusive, as well by reason of the word *post*, as because it is always so understood among merchants. But the court was of opinion, 1. That in real actions the writ may abate in part; but in personal actions a writ cannot abate in part. Therefore admitting that the day is excluded here, the writ must abate for the whole, or not at all. 2. That there is no fraction of a day in this case, but that it shall be intirely included or excluded in this

Custom of merchants necessary in declaration on bills of exchange. *Ld. Raym. 280. 2 Lutw. 1594.*

this case ; for the law will never account by minutes or hours, to make priorities in a single day, unless it be to prevent a great mischief or inconvenience ; and if a bond be made the first day of *Jan.* and this bond is released the same day, the bond may be averred to be made before the release. So if a *feme sole* bind herself in a bond, and the same day marries, one may aver, that she married after the bond delivered. In assize it appears, that the disseisin was done the same day on which the writ was *teste* ; yet this shall not abate the writ, because the assize might be purchased after disseisin. 3. That if there is a custom among merchants, that the day of the sight shall be excluded, it ought to have been pleaded specially ; for it is a special custom, of which the court cannot take knowledge without pleading. And *Powel*, Justice, said, that the court would take notice of the *lex mercatoria*, as that there is no survivorship, or of a general custom, as gavelkind ; but that such special custom as this here ought to be pleaded. As in an action upon a bill of exchange, unless the plaintiff declares upon a custom to support the *assumpsit* according to the common form, the action will not be maintainable. 4. *Powel* and *Nevill*, justices, were of opinion, that the day in this case ought to be included ; so that the day on which the bill was shewn shall be reckoned one of the ten ; for according to *Clayton's* case, and all the books, when the computation is to be made from an act done, the day in which the act was done must be included ; because since there is no fraction in a day, that act relates to the first moment of the day in which it was done, and was as if it were then done. But when the computation is to be from the day itself, and not from an act done,

done, there the day in which the act was done must be excluded by the express words of the parties. As if a lease be made to commence *a die datus*, the day is excluded; but if it be *a confectiōe*, which is an act done, the day of the making shall be included. But Treby, chief justice, *contra*, held that if a bill be payable ten days after sight, the day of the sight cannot be accounted one of the ten days, but shall be excluded. 1. Because it may be seen the last minute of the day, and that may be intended as reasonably, as that it was seen the first minute. 2. The party may have the whole day to view the bill, and that is allowed him by the law. 3. Because the contrary construction seems absurd; for then if a bill be payable one day after sight, it must be paid the same day that it is seen, which is not the day after the sight, as the bill requires. As to Clayton's case, he admitted, that it was good law, but not contrary to his opinion; for if a man makes a lease the first of Jan. to have and to hold, *a confectiōe* for a year, there the day of the making must be accounted one, because being a lease from the delivery, and to continue but for one year, unless the day be included, the lease will not determine until the end of the first of Jan. the next year, and so there will be two first days of Jan. in the one year. But notwithstanding his opinion, because his brothers were of a contrary opinion, he awarded that the writ should stand, and that the defendant should answer over. Note, before this opinion of the court was pronounced, the defendant's counsel offered to take exceptions to the declaration, but the court refused to admit them; for *per curiam* upon a plea to the writ, the defendant cannot take exceptions to the court before the writ be adjudged

Bills of Exchange.

judged good, for then the defendant has time enough to take advantage of the declaration, and before it is needless ; because if the writ be abated, that will determine the whole. After this it was objected, that the defendant had not made defence, and the question was, if this was matter of form, and so aided by the general demurrer, and *prima facie* the court was of opinion, that this was matter of substance, because the defendant is not party to the action without defence ; but after having consulted the judges of the King's Bench, where it has been a long time held matter of form, they agreed that it was aided by the general demurrer, though at the same time they seemed to comply with that opinion, rather than to approve it with their own judgments, to the end that there might be a conformity between the two courts. *Bellasis v. Hester.*

Bill is not indorsable in part, without satisfaction acknowledged for the rest. *Ld. Raym. 360. Salk. 65. Carth. 466. 12 Mod. 217.*

The plaintiff brought an action upon the case upon a bill of exchange against the defendant, and declared upon the custom of merchants, which he shewed to be thus : that if any merchant subscribes a bill, by which he promises to pay a sum of money to another man, or his order, and afterwards the person to whom the bill was made payable indorses the said bill, for the payment of the whole sum therein contained, or any part thereof, to another man, the first drawer is obliged to pay the sum so indorsed to the person to whom it is indorsed payable ; and then the plaintiff shews that the defendant *Cardy*, being a merchant, subscribed a bill for forty-six pounds, nineteen shillings, payable to *Blackman*, or his order ; that *Blackman* indorsed forty-three pounds, four shillings of it payable to the plaintiff, &c. The defendant joined in demurrer, and adjudged, *per totam curiam*, that the declaration is

is ill. For a man cannot apportion such personal contract, for he cannot make a man liable to two actions, where by the contract he is liable but to one. As if A grants a rent charge of twenty pounds *per annum* to B, B grants ten pounds to C, C cannot compel the tertenant to attorn. So if lands are conveyed with warranty to A and B, their heirs and assigns, if partition be made, the warranty is extinct. See *Hob. 25. Roll.* and *Osborne's case*. But if in the principal case the plaintiff had acknowledged the receipt of the three pounds, fifteen shillings, the declaration had been good; and though it was objected by Mr. *Northey* for the plaintiff, that the plaintiff has made payment of a part to be part of the custom, and therefore it was well enough by the custom. *Holt*, chief justice, answered, that this is not a particular local custom, but the common custom of merchants, of which the law takes notice; and therefore the court cannot take the custom to be so. And the whole court were of opinion, that judgment ought to be entered for the defendant. But upon the importunity of Mr. *Northey* leave was given to the plaintiff, to discontinue upon payment of costs. *Hawkins v. Cardy*.

Assumpsit upon a bill of exchange. The plaintiff declares, that J. S. drew a bill of exchange upon the defendant, dated the 25th of *March*, 1696, payable within one month after; that afterwards, *viz.* such a day in *April*, 1697. he shewed the bill to the defendant, and he promised to pay it, *secundum tenorem et effectum billæ prædictæ*. *Non assumpsit* pleaded, and verdict for the plaintiff. Sir *Bartholomew Shower* moved in arrest of judgment, that the promise was void, because impossible to be performed, the day of payment being past at the time of the

Promise to pay a bill already due, *secundum tenorem*, is a general promise. Lord Raym. 364, 744. 12 Mod. 212. Carth. 459.

Bills of Exchange.

the acceptance of the bill, and so impossible to be performed *secundum tenorem et effectum billæ prædictæ*, all which appears upon the plaintiff's declaration. To which Mr. *Northey* for the plaintiff answered, that it will amount to a promise to pay generally, of which opinion was the whole court. And *Holt*, chief justice, took the distinction, where the day of payment is past at the time of the acceptance, as it was in this case, and where the payment is to come. In the former case acceptance to pay *secundum tenorem et effectum billæ* will amount to a general acceptance to pay the money ; *contra* in the latter case. For in the former case it is impossible to pay the money as the bill appoints. But he said, that it had been better in this case, to have declared of a general promise, without having restrained by the *tenorem effectum billæ* ; and, (by him) in such case the acceptance of a bill amounts to an express promise to pay it. But (by him) if the plaintiff declares, that the acceptance was before the day appointed for the payment, and that he accepted to pay it *secundum tenorem et effectum billæ prædictæ*, and it appears upon the evidence, that the acceptance in fact was after the day of payment, that would be against the defendant. Judgment for the plaintiff. *Jackson v. Pigott*.

Declaration on a bill of exchange is good without an express promise. *Ld. Raym.* 538. *Salk.* 128. *Carth.* 509.

In an action upon the case upon a bill of exchange, the plaintiff in his declaration declared upon a bill of exchange, and that he offered it to the person upon whom it was drawn, and he refused to pay it, *per quod* the first drawer *devenit onerabilis per consuetudinem*, &c. and there was an *indebitatus assumpsit*, and a *quantum meruit*, in the declaration. Judgment by default, and a writ of inquiry of damages, and intire damages given. And now it was moved in

in arrest of judgment, that as the matter stood upon the first count, this action was founded upon a deceit, the bill not being paid according to the warranty, every one who draws a bill warranting the payment of it; and therefore being in the nature of an action for a deceit, which is a tort, it cannot be joined with an *assumpsit*, which is founded upon a contract; and therefore for want of laying an express promise, it was ill, intire damages being given. *Northey* said, that the action was founded upon the custom, and that the obligation arose by that, and therefore the action is maintainable without shewing a promise. *Cro. Car.* 302. A declaration upon a bill of exchange, without shewing any promise, and the roll is so. 2. This sounds all in contract, for the custom raises a promise in law, that the drawer will pay the money, if the person on whom it is drawn refuses to pay it. And 2 *Cro.* 307, says, that if a merchant accepts a bill, it has, by the custom, the force of a promise, to compel him to pay the money. *Holt*, chief justice, at the beginning seemed to agree with the objection, and said that he who draws the bill warrants the payment of it, and if he does not, it is a deceit, and one may have an action upon it; but then they ought not to join it with an action upon a promise. That is the reason of the case of *Sir John Dalston and Johnson*. Mich. 7 *W. III.* B. R. Ante 58, in the time of 2 *Cro.* they were not arrived at this way of declaring upon bills of exchange. *Gould*, justice, cited 1 *Sid.* 306, that if a man brings *assumpsit* for the arrears of an account, where the action formed is debt, he ought to lay an express promise, to maintain the action. *Holt* said, that the notion of promises in law was a metaphysical notion, for the law makes no promise

mise but where there is a promise of the party. Afterwards in this term judgment was given for the plaintiff, because the drawing of the bill was an actual promise. *Ex relatione m^ri Jacob. Starke v. Cheeseman.*

Declaration need
not alledge an ac-
tual promise on
acceptance on a
bill of exchange.
Comyn. 73.

Action upon a bill of exchange, and the plaintiff declared, that one *Milburn* drew a bill of exchange upon *George Walcup* in *London*, to be paid to the plaintiff's orders at double usance at *Amsterdam*, (and the bill was dated the 26th of *October*, 1699, and by that the double usance expired the 26th of *December*; and by the custom of merchants, the person upon whom a bill is drawn, hath three days of grace for the payment in *England*, and eight days of grace in *Holland*). The bill was tendered to *Walcup* on the 30th of *December*, who accepted of it, by which he became liable, and *super hoc præd.* (the defendant) *eisdem die et anno, seper se assumpsit quod ipse præd. denarios in eadem billa content. eidem G. bene solvere et contentare vellet secundum tenorem et effectum billæ præd.* And it was moved, that this was ill by Sir *Barth. Shower* and *Dee*; for the bill was not tendered or accepted till the 30th of *December*, which was the last day for the payment; then as the defendant promised (as it was alledged) on the same day, according to the effect of the bill, it was a thing impossible, for the payment was to be at *Amsterdam*, which could not be on the same day, and therefore the plaintiff had not declared well; for he ought to have said, that by the custom of merchants, if a bill was accepted, the acceptor obliged himself to make payment to the person who tendered it, &c. And Sir *Barth. Shower* said, that it was proved at the trial by a public notary, that if a man accepts a bill payable at *Amsterdam*, he ought to assign a house

house where the money ought to be paid, otherwise it is not a good acceptance, and the bill may be protested; and if this bill had been tendered within the term of the double usance, it might have been protested, but after the usances were expired, he doubted whether such protests could be made. But it was said, on the other side, and resolved by the court, that the judgment should be for the plaintiff; for the allegation of any promise for payment was not needful, for the acceptance is an actual *assumpsit*, and the declaration need not alledge more; and although some house where the money ought to be paid at *Amsterdam* should be named, otherwise the party may protest the bill, yet if it is accepted, the acceptor becomes liable thereby.

And *Holt*, C. J. said, that if a bill of exchange is drawn upon a man who refuses it, a stranger may accept it, for the honour of the drawer, and by such acceptance he becomes liable.

And it was agreed in the same case, that a bill of exchange, payable to the order of a person, shall be paid to him or his order, for it is tantamount. *Gregory and Walcup*.

William Murray brought an action against the defendant, *Sir John Ereskine*, upon an inland bill of exchange, wherein he declared, that he, on 1 *March*, 1727, at *Westminster* in the county of *Middlesex*, made his bill of exchange in writing to the said *Sir John* directed, and by the said bill requested the said *Sir John*, upon the 10th day of the said month of *March*, to pay to the said *William Murray*, or order, at his mansion-house in *Edinburgh* two hundred pounds sterling, *pro valore in manibus ipsius Johannis de denariis accomodatis de eodem Willielmo*; that the defendant, *Sir John*, accepted the

L bill

What declaration upon a bill of exchange is good. 2
Ld. Raym. 1542.
Barnard, K. B. 872. Stra. 517.

Bills of Exchange.

bill, *ac ratione inde secundum consuetudinem mercatorum*, became liable to pay, &c. and being so liable, promised to pay the said two hundred pounds to the plaintiff *Murray*, &c. The defendant, *Ereskine*, let judgment go against him by *nihil dicit*, and after execution of a writ of inquiry, and final judgment given against him, he brought this writ of error.

The first exception took by Mr. *Wynne* and Mr. *Robinson*, counsel for the plaintiff, in error was, that it was not alledged, that the bill was drawn according to the custom of merchants.

But to this it was answered by Mr. *Reeve*, council for the defendant in error, and so resolved by the court, that the law took notice of the custom of merchants, without setting it out specially ; and if the bill, as set out in the declaration, appeared to be within the custom of merchants, it was sufficient ; besides, after setting out the bill and acceptance, it is said, *ratione inde secundum consuetudinem mercatorum*, the defendant below became liable, which they held was sufficient.

The second exception was, that it was not averred, that the bill was signed by Mr. *Murray*.

The third exception was, that the defendant had not accepted the bill by underwriting the same under his hand. See 9 *W. III. c. 17.* and 3 and 4 *Ann. c. 9. par. 4 and 5.*

As to the signing, it was answered, that it is alledged, that the plaintiff made his bill of exchange in writing to the said Sir *John Ereskine* directed, and by the said bill requested ; which of necessity implies, the plaintiff's name was written in the bill, else he could not request ; and the saying he made the bill in writing imports he writ, or somebody by his authority

thority writ, which will be the same thing, and imports a signing, which is necessary in case of inland bills of exchange. And such a way of declaring was held sufficient in cases of promissory notes, where the act 3 and 4 Ann. c. 9. requires, that the party who makes the bill, or some person intrusted by him, should sign it. * *Taylor v. Dobbins.* † *Elliot v. Cooper.*

* Stra. 399.
† 2 Lord Raym.
1376.

The fourth and last exception was, that the bill was not laid to be for value received; but it is *pro valore in manibus ipsius Johannis de denariis accomodatis de eodem Willielmo*, not *eodem Willielmo*. But the court held, *pro valore in manibus ipsius Johannis* had been sufficient; and the other words may be rejected as surplusage; the court held, that the meaning was, lent by the said *William*, though the *Latin* might not be so correct; and the judgment of the Common Pleas was affirmed, Nov. 23, 1728. *Ereskine v. Murray.*

13. *Venue.*

It cannot be changed in an action on a bill of exchange. * *Everett v. Sansum.* † *Ward v. Colclough.*

Venue cannot be changed.
* 2 Barn. Not. C. P. 391.
† Cas. of Pract. C. P. 119. See 66.

14. *Evidence.*

Action on a bill of exchange, being by an executor, and upon a debt laid to be due to testor. *Holt* held it necessary to prove the acceptance was in the testator's time. *Anon.*

Acceptance of a bill must be proved to be in testator's life, on an action brought by an executor, 12 Mod. 447.

In an action by the indorsee of a bill of exchange against the acceptor, it was held not to be necessary to prove the hand of the draw-

Acceptor not to be admitted to prove forgery of a bill. 2 Stra. 946. Salk. 126.
3 Salk. 71.

er; and the plaintiff rested on the proof of the acceptance. The defendant offered to prove it a forged bill, by calling persons who were acquainted with the hand of the drawer, and would swear they did not believe it to be his hand. But the chief justice would not admit this, from the danger to negotiable notes, and because a man might with design write contrary to his usual method, and he strongly inclined, that even actual proof of forgery would not excuse the defendants against their own acceptance, which had given the bill a credit to the indorsee. *Jenys v. Fawler, et al.*

When a bill cannot be given in evidence of payment. Salk. 124. 12 Mod. 203.

A gives B a bill of exchange on C, in payment of a former debt; this will not be allowed as evidence on *non assumpsit* unless paid, though B kept it in his hands long after it was payable. *Clarke v. Mundal.*

Notice from indorsee to acceptor must be personal; letter by the post is not sufficient proof. Barnard, K. B. 199, 200.

As to notice given by the indorsee to the acceptor, before he commenced his action, that he must provide the money, it was offered in evidence, that he gave him notice by sending him a letter to do so; but the chief justice said, that he did not think the bare sending a letter to the post-house would be sufficient evidence of notice, without some further proofs of the acceptor's receiving it; and besides he said, that generally a personal demand is expected. *Dale v. Lubeck.*

In Trover for a bill of exchange the person who carried it to the defendant indorsed blank was held a good witness. Salk. 130. 2 Ld. Raym. 871.

Plaintiff had a bill of exchange drawn on the defendant, which he indorsed and delivered to J. S. who went to the defendant to get it accepted. J. S. left it with him, and it was afterwards lost, thereupon they brought trover. The court were all of opinion, that the bare indorsement, without any other words purporting an assignment, does not make an alteration of the property, for it may still be filled up either with a receipt on an assignment, and

and consequently J. S. is a good witness. *Lucas v. Haines*,

In a case upon a bill of exchange, upon the evidence at the trial before *Holt*, chief justice, at Guildhall, *Nov. 23, Mich. 12. W. III.* the case was thus. A draws a bill of exchange upon B, payable to C at *Paris*; B accepted the bill, C indorsed it, payable to D, D to E, E to F, F to G; G demanded the bill to be paid by B, and upon non-payment G protested it within the time, &c. And then G brought an action against D, and it was well brought, and he recovered. Afterwards D brought an action against B, and though D produced the bill and the protest, yet because he could not produce a receipt for the money paid by him to G, upon the protest, as the custom is among merchants, as several merchants upon their oaths affirmed, he was nonsuited. But *Holt* seemed to be of opinion, that if he had proved payment by him to G, it had been well enough. *Mendez v. Carreroon*.

Indorsee need not prove the drawer's hand, because though it be a forged bill, the indorser is bound to pay it. *Lambert v. Packe*.

Indorsee need not prove any demand on drawer.

Plaintiff to shew a protest, produced an instrument attested by a notary public; and tho' it was insisted upon that he should prove this instrument, or at least give some account how he came by it, *Holt* ruled it not to be necessary; for that, he said, would destroy commerce and public transactions of this nature. *Anon.*

Original drawer, who was offered as an evidence in an action upon a bill of exchange, to prove that he did not draw the bill, was denied, because at last the burthen must fall up-

Indorser must prove payment of bill. *Ld. Raym.* 743, 744.

Indorsee need not prove the drawer's hand. *Salk.* 127. See 2 *Stra.* 946.

Nor a demand on him. *Law of bills*, 70. pl. 17. What is sufficient evidence of a protest. 12 *Mod.* 345.

Drawer no witness to prove the bill not drawn by him, unless released. *Caf.* *Temp. Holt.* 297.

ON But the mischief

of this practice, especially in case of a negative on a bill of exchange, should be considered.

on him, but was admitted upon having a release executed to him in court. *Dupays v. Shepherd.*

15. *When Interest and Damages are recoverable.*

Interest payable from demand.
6 Mod. 138.

Interest on bills of exchange commences from demand made, and therefore, if there was no demand made till action brought, the defendant may plead tender and refusal, and *Uncore Prist.* and so discharge himself of interest; but if it be the defendant's fault that the demand could not be made, as if he were out of the kingdom, there want of demand ought not to prejudice the plaintiff. *Per Cur. Anon.*

Or from the protest. 10 Mod. 36.

Drawee accepts the bill, and some time after protests it, and thereupon the bill is indorsed to the drawer, who brings an action as indorsee, and held well, and interest was ruled to be paid from the time of the protest. *Louviere v. Laubray.*

Drawer not liable to interest, damages, or costs, unless acceptance thereof be in writing. 3 and 4 Ann. c. 9. Sect. 5.

“No acceptance of any inland bill shall charge any person, unless underwritten or indorsed, and if not so underwritten or indorsed, no drawer to pay costs, damages, or interest, unless protest be made for non-acceptance, and within fourteen days after protest the same be sent, or notice thereof given, to the party from whom such bill was received, or left in writing at his usual place of abode; and if such bill be accepted, and not paid within three days after due, no drawer shall pay costs, damages, or interest thereon, unless protest be made and sent, or notice given as aforesaid; nevertheless the drawer shall be liable to payment of costs, damages, and interest, if any one protest be made for non-acceptance or non-payment, and notice be sent, given, or left.”

Since

Since the above statute it has been adjudged, ³ Bac. Abr. 611.
that an indorsee of an inland bill of exchange ² Stra. 1000.
may maintain an action against the acceptor,
on a parol acceptance, as to the principal sum,
though not as to interest and costs; for the
act being made to give a further remedy for
interest, damages, and costs against the draw-
er, cannot be supposed to take any advantage
from the payee, which he had before; and
therefore the true construction of the act is,
that to charge the drawer with interest and
costs, the drawee must refuse to accept it in
writing; nevertheless, if he accept the bill by
parol, he is liable to the principal sum in the
bill, as he would have been before the act.
Lumley v. Palmer. See the last case but one un-
der the Head of "Acceptor and Acceptance,"
as to interest. p. 118.

In an action against the drawer of an inland bill after an acceptance, the chief justice ruled, Interest on a bill
that for want of a protest, according to 9 and not to be allowed
10 W. III. c. 17. the drawer could not be without a pro-
charged with interest. Then the plaintiff test. 2 Stra. 910.
would have had it as for money lent, and that
appeared to be the consideration of the bill;
but the chief justice said it had never been al-
lowed barely for money lent, without a note,
so the plaintiff had no interest allowed him.
Harris v. Benson.

The bill being payable thirty days after sight, the jury gave interest from thirty days Interest given
after the date of a letter, which acknowledged from the time of
the receipt of the bill. *Wilkinson versus Lut- acceptance. 2*
teridge. Stra. 649.

16- *Equity and Injunction.*

When court will
grant an injunc-
tion on a bill of
exchange. Fin.
Rep. 356.

A requested B to let him have fifty pounds in *London*, and he would draw a bill on C in the country to repay it to B, as soon as B should return home. B gave two bills to A, one for twenty pounds, and another for thirty pounds, payable at twenty days sight, which the drawee accepted. On B's return, the drawee in the country refused to pay A's bill. B, on this, writes to stop payment of his bills, but one was paid before, but the drawee refused to pay A the other. Decreed, A to pay back the twenty pounds received, and a perpetual injunction against A for the other thirty pounds. *Hill and Penford v. Baker.*

When it will
not. 2 Vern.
123. See 2
Freem. 112.

Bill for relief against a bill of exchange, on pretence of its being gained by threats or menaces, is not proper for equity, it being a matter at law, and *Duress* a good plea there; but being gained by fraud, and for a fictitious consideration, it was relieved *per* commissioners. *Dyer v. Tymewell.* And see the last case but one under the head of "Acceptor and Acceptance."

17. *When deemed Payment.*

Select. cas. of
evid. 2.

1. *Griffith* sold to *Pope* glasses for twenty-five pounds, for which *Pope* gave him a bill, drawn by himself on one *Samuel Lobs* for the same sum, and *Griffith* gave him a receipt for the bill. *Lobs* accepted the bill, but afterwards proved insolvent, and never paid; and three years after, and not before, the plaintiff acquainted the defendant with it, and then brought

brought an *indebitatus assumpsit* for the value of the glasses.

The defendant, on *non assumpsit*, gave the delivery of this bill in evidence ; and the chief justice directed the jury, that if this bill was accepted for payment, unless refused, and the bill returned, and notice given to the drawer in a reasonable time ; he said, the plaintiff's keeping the bill so long was evidence of his accepting it as payment ; and accordingly the jury found for the defendant. *Griffith v. Pope.*

3. A bill of exchange shall never go in payment of a precedent debt, unless it be part of the contract that it should be so. *Clarke v. Mundal.*

Where bill no payment. Salk. 124. 12 Mod. 203.

4. A sells goods to B, and B is to give a bill in satisfaction ; B is discharged, though the bill is never paid, for the bill is payment ; but otherwise a bill should never discharge a precedent debt, or contract ; but if part be received, it shall only be a discharge of the old debt for so much.

Where bill payment. Salk. 124. 12 Mod. 203.

A bill of exchange is not payment, unless the party omits receiving it in a reasonable time, as three days, when he might have received it ; but if he gives a receipt, and accepts the bill as payment, this shall bind him. *Sir Charles Thorold v. Smith.*

Bill no payment. 11 Mod. 87.

18. Bills lost, forged and stolen.

1. A bill of exchange was accepted by the drawee, by underwriting his name ; but the person to whom it became payable by indorsement lost or mislaid it, and the drawee refusing payment, the indorsee exhibited his bill in chancery, setting forth the refusal, and that he offered

Indorsee of a lost bill may oblige the drawee to pay the money upon indemnifying him. Fin. 301.

offered to give security to the defendant to indemnify him, and annexed an affidavit to the bill of the losing or mislaying it. This being confessed by the answer, it was objected, that it did not appear by the plaintiff's affidavit, that he had not assigned the bill to another, but decreed the defendant pay the money, the plaintiff giving security to indemnify the defendant, as the master shall think reasonable, against any person that may hereafter demand the same. *Fercese v. Gray.*

Bill lost or mis-
carried, drawer
to give another.
9 and 10 W. III.
c. 17. Sect. 3.
See Mol. B. 2. c.
10. Sect. 26.

2. "If any inland bill of exchange for five pounds or upwards for value received, drawn payable at a certain number of days, &c. after the date thereof, be lost, or miscarry within the time limited for payment of the same, the drawer of the said bills shall give other bills of the same tenor, security being given (if demanded) to indemnify him, in case the said bills so lost, or miscarried, be found again."

Forging bills of
exchange death.
2 Geo. II. c. 25.
Sect. 1. made
perpetual by 9
Geo. II. c. 19.

"If any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, &c. or willingly act or assist in the false making, &c. any bill of exchange, with intention to defraud any person whatsoever, or shall utter or publish as true any false, &c. bill of exchange, with intention to defraud any person, knowing the same to be false, &c. such person shall be guilty of felony, without benefit of clergy."

Stealing bills of
exchange death
by Sect. 3 of the
above statute,

* See Sect. 1. of
"Stealing, forg-
ing, and losing
promissory
notes."

"If any person shall steal or take by robbery any * bills of exchange, being the property of any other person or persons, or of any corporation, notwithstanding they are deemed in law *choses* in action, it shall be deemed and construed to be felony, of the same nature, and in the same degree, and with or without the benefit of clergy, in the same manner

manner as it would have been, if the offender had stolen or taken by robbery any other goods of like value, with the money due on such bills, or secured thereby, and remaining unsatisfied; and such offender shall suffer such punishment as he or she should or might have done, if he or she had stolen other goods of the like value with the monies due on such bills, or secured thereby, and remaining unsatisfied."



Promissory

Of Promissory Notes.

I. Of their Origin and Form.

Promissory notes
at common law.
Salk. 24. 2 Ld.
Raym. 825. 3
Bac. Abr. 605.
Salk. 129. See 2
Ld. Raym. 759,
774. Salk. 130.
2 Ld. Raym. 757.

THE increase of trade, and necessity of paper credit, put bankers and others upon an expedient of bringing promissory notes within the custom of merchants, and making them negotiable, as inland bills of exchange; but this the judges would not admit of, promissory notes being only considered, by the common law, as evidences of a debt, and not assignable, or negotiable, in their own nature.

But it being found necessary to make use of this kind of credit, by the 3d and 4th *An. c. 9.* A note wrote by the plaintiff, and subscribed by the defendant, is a note made and signed by the defendant within this act; for the signing or subscribing is the lien, and the writing and making is only the mechanical part of it. 3 Bac. Abr. 606. It was a question, Whether, on this statute, the want of consideration of a promissory note could be given in evidence? Two judges were of opinion it could not, but the two senior judges, and lord King, were of a contrary one, and that this act only turned the proof upon the defendant, to shew that no consideration was given on such note; which, by the statute, is made evidence, but not conclusive evidence of the consideration. Gill. Eq. Rep. 154. But see 2 Freem. Rep. 257, where it is held, that, if a man gives a note payable on demand, no consideration need be proved; and the practice is so. And see Stra. 674. Sel. Cas. of Evid. 20. A note to be accountable for money is within the statute. 2 Lord Raym. 1399. 2 Stra. 629. 8 Mod. 363, 364. See Stra. 706. One payable so many days after marriage, not negotiable. 2 Stra. 1151. See Skin. 398. 4 Mod. 242. Comb. 227. One payable so many days after the death of the drawer's father good. 2 Stra. 1217. Note to pay two months after the ship is paid off, is good. Stra. 22. Postlethw. Dict. 261. See Fortesc. 281. To deliver up horses, and a wharf, and pay money, is not within this act. 2 Stra. 1271. but to pay for the debt of another is Stra. 264. So is one to pay money, value received, of the premises in Rosemary-lane. 2 Lord Raym. 1545. But to do an act, or pay a sum of money, is not. Gilb. Cas. 93. 2 Lord Raym. 1362. See 2 Ld. Raym. 1296. 8 Mod. 362. Though it has the word Order, it is within this statute. Sel. Cas. of Evid. 18.

(made

(made perpetual by 7 *Ann. c. 25*, sect. 3.) reciting, that, "Whereas it hath been held, that notes in writing, signed by the party who makes the same, whereby such party promises to pay unto any other person, or his order, any sum of money therein mentioned, are not assignable or indorsible over within the custom of merchants, to any other person, and that such person to whom the sum of money mentioned in such note is payable, cannot maintain an action, by the custom of merchants, against the person who first made and signed the same; and that any person to whom such note shall be assigned, indorsed, or made payable, could not, within the said custom of merchants, maintain any action upon such note against the person who first drew and signed the same: therefore, to the intent to encourage trade and commerce, which will be much advanced, if such notes shall have the same effect as inland bills of exchange, and shall be negotiated in like manner, it is enacted, "That all notes in writing, that shall be made and signed by any person or persons, body politic or corporate, or by the servant, or agent, of any corporation, banker, goldsmith, merchant, or trader, who is usually intrusted by him, her, or them, to sign such promissory notes for him, her, or them, whereby such person or persons, body politic and corporate, his, her, or their servant, or agent, as aforesaid, doth, or shall promise to pay any other person or persons, body politic and corporate, his, her, or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body

Promissory Notes.

body politic and corporate, to whom the same is made payable; and also every such note, payable to any person or persons, body politic and corporate, his, her, or their order, shall be assignable, or indorsible over, in the same manner as inland bills of exchange are, or may be, according to the custom of merchants; and that the person or persons, body politic and corporate, to whom such sum of money is, or shall be, by such note, made payable, shall and may maintain an action for the same in such manner as he, she, or they, might do upon an inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politic and corporate, who or whose servant, or agent, as aforesaid, signed the same; and that any person or persons, body corporate and politic, to whom such note that is payable to any person or persons, body politic and corporate, his, her, or their order, is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her, or their action, for such sum of money, either against the person or persons, body politic and corporate, who or whose servant, or agent, as aforesaid, signed such note; or against any of the persons that indorsed the same, in like manner as in case of inland bills of exchange; and in every such action, the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit: and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given against him, her, or them, the defendant, or defendants, shall recover his, her, or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs, defendant or defendants, respectively,

spectively, recovering, may sue out execution for such damages and costs, by *capias*, *feri facias*, or *elegit*."

"Provided that no body politic or corporate shall have power, by virtue of this act, to issue or give out any note by themselves, or their servants, other than such as they might have issued, if this act had never been made."

2. Of Actions, Declarations, and Pleadings.

1. "ACTIONS to be brought upon promissory notes, shall be brought within the time appointed for bringing action by 21 Jac. c. 16."

Within what time an action must be brought. 3 and 4 An. c. 9. sect. 2.

Upon a promissory note dated in 1704, the defendant pleaded, *actio non accrevit infra sex annos*: the plaintiff replied a bill filed 12 An. and after verdict the judgment was arrested, because in this case the day is material. *Cole and Hawkins. O. Stafford v. Forcer.*

In setting forth a note, the day is material. Stra. 22. O. 10. Mod. 313.

2. The plaintiff declared that the defendant, *fecit quandam notam in scriptis per quam promisit solvere*: and exception was taken, that here is no signing by the defendant, as the statute requires; and the case, *Taylor versus Dobbins*, had the words *manu sua scripsit*, which was the ground of the judgment in that case. But in the principal case the court held it was well enough, for unless it was signed or wrote by him, it could not be such a note whereby the defendant promised to pay. Judgment for the plaintiff. *Elliot v. Cowper. Boyce v. Fisher.*

Fecit notam, quam promisit, solvere imports signing. Stra. 609. 2 Lord Raym. 1376, 1484.

3. Debt upon two promissory notes and a *mutuus*; and, on demurrer to the declaration, I objected, that an action of debt would not lie; that before the statute no action at all lay upon

Debt lies not on a promissory note. Stra. 68.

upon the note, as a note, (*Salk.* 129); nor did an *indebitatus assumpsit* lie on a bill of exchange. And the only remedy given upon the note by the statute is the same that was before on an inland bill of exchange. And of this opinion was the court, and pronounced judgment for the defendant. But then it was observed by Serjeant *Comyns*, for the plaintiff, that there was one good count upon the *mutuatus*, and the demurrer was to the whole. Whereupon judgment was given for the plaintiff, which I believe it will be difficult for him to enter, so as to maintain it. *Wells v. Craig.*

A joint or several note, how to be declared on. *Stra.* 76. 2 *Ld. Raym.* 1535. S. P. 2 *Stra.* 812. 2 *Ld. Raym.* 1544.

Sid. 189, 238.

4. Case upon a promissory note. And the declaration set forth, that the defendant and another did *conjunctiom vel divisim* promise to pay. *Demurrer inde*; and for the defendant it was insisted, that the action should have been brought against both. *Et per Parker*, chief justice. The plaintiff might have brought it against either or both, for he had his election if the action had been against both, he should have declared as he now does; but that is not right in the action against the one only, for he should have declared generally, that this defendant, by his note, promised to pay, and a several note by two would have been good evidence; as where there are several obligors, and one only is sued, no mention is made in the declaration of the other obligors. Suppose the note had been to pay fifty pounds, or one hundred pounds, the plaintiff is intitled to either, but uncertain which till he has made his election; for he that speaks in the disjunctive says true, if either member of the disjunctive be verified; whereas, he that speaks in the affirmative affirms both parts to be true.

The

The plaintiff prayed leave to discontinue on payment of costs, which was granted; and at another day moved, that he might change his rule to one to amend on payment of costs; but this last motion was denied. *Butler v. Mallisly. Ovington v. Neale.*

In case, upon a promissory note, the declaration ran, that the defendant made a note, *et manu sua propria scripsit*. Exception was taken, that since the statute he should have said, that the defendant signed the note, but the court held it well enough, because said to be wrote with his own hand; and there needs no subscription in that case, for it is sufficient his name is in any part of it. I, J. S. promise to pay, is as good as I promise to pay, subscribed J. S. *Taylor v. Dobbins.*

Note alledg'd to be written by the defendant, need not be said to be signed by him. *Stra. 399.*
2 Lord Raym. 1377. See 2. Ld. Raym. 1481.

The plaintiff brought an action upon the case against the defendant upon several promises. One count was upon a general *indebitatus assumpsit*, for money lent to the defendant. Another count was upon the custom of merchants, as upon a bill of exchange; and shewed, that the defendant gave a note subscribed by himself; by which he promised to pay to the plaintiff, or his order, &c. Upon *non assumpsit*, a verdict was given for the plaintiff and intire damages. And it was moved, in arrest of judgment, that this note was not a bill of exchange within the custom of merchants; and therefore, the plaintiff having declared upon it as such, was wrong: but that the proper way in such cases is to declare upon a general *indebitatus assumpsit*, for money lent, and the note would be good evidence of it. But it was argued, by Sir *Bartholomew Shower*, the last *Michaelmas* term, for the plaintiff, that his note, being payable to the plaintiff or his order, was a bill of exchange, in as

Note payable to J. S. or order, is not a bill of exchange, and a count upon it as such will arrest the judgment. 2 Ld. Raym. 757. Salk. 129. * 2 Ld. Raym. 759. Salk. 129. † 2 Ld. Raym. 774.

much as by its nature it was negotiable : and that distinguishes it from a note payable to J. S. or bearer, which he admitted was not a bill of exchange, because it is not assignable nor indorsable by the intent of the subscriber ; and consequently, and therefore, it cannot be a bill of exchange, because it is incident to the nature of a bill of exchange to be negotiable : but here this is negotiable ; for if it had been denied to J. N. J. N. might have brought his action upon it as upon a bill of exchange, and might have declared upon the custom of merchants. Why then should it not be before such indorsement a bill of exchange to the plaintiff himself, since the defendant, by his subscription has shewn his intent, to be liable to the payment of this money to the plaintiff, or his order ; and since he hath thereby agreed, that it shall be assignable over, which is by consequence that it shall be a bill of exchange ; that there is no difference in reason between a note which saith, I promise to pay to J. S. or order, &c. and a note which saith. I pray you to pay to J. S. or order, &c. They are both equally negotiable ; and to make such a note a bill of exchange can be no wrong to the defendant, because he, by the signing of the note, has made himself to that purpose a merchant, (2 *Ventr.* 292. *Sarsfield v. Witherly.*) and has given his consent, that his note shall be negotiated ; and thereby has subjected himself to the law of merchants. But *Holt*, chief justice, was *totis viribus* against the action ; and said, that this note could not be a bill of exchange ; that the maintaining these actions upon such notes, were innovations upon the rules of the common law ; and that it amounted to the setting up a new sort of specialty, unknown to the common law, and in-

invented in *Lombard-street*, which attempted in these matters of bills of exchange to give laws to *Westminster-hall*; that the continuing to declare upon these notes upon the custom of merchants proceeded from obstinacy or opinionativeness, since he had always expressed his opinion against them; and since there was so easy a method as to declare upon a general *indebitatus assumpsit* for money lent, &c. As to the case of *Sarsfield v. Witherly*, he said he was not satisfied with the judgment of the King's Bench; and that he advised the bringing of a writ of error.

Gould, justice, said, that he did not remember it had ever been adjudged, that a note, in which the subscriber promised to pay, &c. to J. S. or bearer, was not a bill of exchange: that the bearer could not sue an action upon such a note in his own name, is without doubt, and so it was resolved between *Horton* and *Coggs*, now printed in 3 *Lev.* 299; but that it was never resolved, that the party himself (to whom such note was payable) could not have an action upon the custom of merchants upon such a bill. But *Holt*, chief justice, answered, that it was held, in the same case of *Horton v. Coggs*, that such a note was not a bill of exchange within the custom of merchants: and afterwards, in this *Easter* term, it was moved again, and the court continued to be of opinion against the action; and Mr. *Branthwaite* for the plaintiff urged, that if this note was not a bill of exchange within the custom of merchants, then the promise founded upon it was void; and then it could not be intended that any damage was given by the jury for the breach of, but all the damages must

be intended to have been given upon the general *indebitatus assumpsit*. Holt, chief justice, said, that would be true, if it had been void by reason of its being insensible; but this matter is sensible enough, though not sufficient in law to raise a promise; and therefore one cannot intend, but that damages were given for it; and consequently that judgment must be arrested. And judgment was given, *quod querens nil capiat per billam*, &c. by the opinion of the whole court. *Clerke v. Martin*. **Potter v. Pearson*. †*Burton v. Souter*.

What declaration
upon a note is
good. Barnard,
K. B. 340.

In an action upon a promissory note, Mr. Acherley moved in arrest of judgment, that the plaintiff had declared, upon the statute of 3 Ann. c. 9, which provides, that a man shall have the same remedy upon a promissory note as upon a bill of exchange; and therefore he ought to declare in the same manner upon both. Now, in actions upon bills of exchange, it has been determined, that it is not enough barely to set forth, that a bill of exchange was drawn; but the party ought to conclude, and *sic indebitatus existens super se assumpsit*, so as to alledge an express promise; and for the same reason he urged, that it is not enough for the plaintiff to set forth here, that the defendant *fecit notam promissoriam*: but he ought to go on, and make the same conclusion as is aforementioned; otherwise he said the issue could only be *non fecit notam promissoriam*, and not *non assumpsit*, as the constant method in these cases is. Now, in the present declaration, he said this conclusion is wholly omitted. Mr. Lee, on the other side, answered, that this very exception was expressly over-ruled in the case of *Conyers and Lowther*; and the court were of the same opinion. Judge Page said,
That

That this matter has been doubted, even in the case of a bill of exchange, though now it is settled: but the reason for that he took to be, that a bill of exchange is only an order upon a third person to pay, and no express promise at all; whereas in the present case there is. *Dutton* and his wife against *Staples*.

Case upon a promissory note which ran thus, “ I promise to pay to A. B. eight pounds, so much being due from me to C. D. my landlady, at Lady-day next, who is indebted in that sum to A. B.” Upon the trial it appeared the landlady died before Lady-day, whereby the reversioner became intitled to the rent; and therefore it was insisted for the defendant, “ That the note was only conditional, for it could not be supposed he intended to oblige himself to pay the rent twice.” But the chief justice held, that as to the plaintiff the death of C. D. signified nothing, for the note was due on demand; and the mentioning upon what account the money would be due, for which the defendant obliged himself, can only be taken as an intention to shew he had answered the rent to her if she should come upon him for it when it became due. The plaintiff recovered. *Anon.*

Note not to be avoided by a subsequent accident. Sel. Cas. of Evid. 39.

An action was brought by the indorsee of a promissory note to A, or order; and it was moved before trial, on behalf of the defendant, that the plaintiff might produce the note and leave it with his attorney, in order to be inspected by the defendant, his attorney, &c. on a suggestion that the note was forged; and it was insisted for the defendant, that since even a bond, upon such motion, might be produced, much more might a note: but it was answered, by the council for the plaintiff, and

Plaintiff not obliged on motion to produce a note, it being his evidence and ground of his action. Bunb. 243,

per curiam, though a bond might be produced, being under hand and seal, yet that was upon this occasion, that the plaintiff declares upon it, with a *profert in cur.* yet there is no instance that in this, or such a case, a plaintiff was ever obliged to produce his evidence of what is the foundation of his action; and the statute 3 and 4 *Ann. c. 9*, makes no difference between these notes and inland bills of exchange, but in the point of pleading; and there is no instance since the statute (which must have often happened) that ever such a motion was made, or granted; nor before that statute, that ever a bill of exchange was produced upon such motion. *Odams v. the Duke of Grafton.*

2 Lord Raym.
759. Salk. 25.

In case, upon *assumpsit*, the plaintiff declared, that the defendant, in consideration that the plaintiff, at the special request of the defendant, *deliberasset* to the defendant *quandam notam*, by which one *Hurst* assumed to pay to the plaintiff an hundred guineas, assumed to pay to the plaintiff, &c. Upon *non assumpsit* pleaded, verdict for the plaintiff. And now Mr. *Gilbert* moved in arrest of judgment, that the consideration of this promise was not good, since it did not appear, that *Hurst* gave this note to the plaintiff upon any good consideration, and consequently the said note would be void; and then the delivery of the said note by the plaintiff to the defendant would be no prejudice to the plaintiff nor advantage to the defendant but it was resolved, *per totam curiam*, that this was a good consideration; for, though no consideration was expressed in *Hurst's* note, yet the note being subscribed by *Hurst*, was good evidence of a debt due from *Hurst* to the plaintiff; and therefore the delivery of the evidence

Evidence.

evidence of his debt to the defendant, at his request, was a good consideration of the *assumpsit* of the defendant; upon which this action was brought, and judgment was given for the plaintiff. Note, *Holt*, chief justice, said, that he was of opinion, upon the trial, that it was not necessary for the plaintiff to prove, upon what consideration the note of *Hurst's* was given, the defendant having admitted it to have been given upon good consideration by his promise. *Meredith v. Chute*.

3. Indorsement.

WHEN the note was delivered in, the plaintiff's name was upon it, and the chief justice permitted it to be struck out in court, it being only an indorsement in blank. *Theed v. Lovel*.

Indorsement in blank of a note struck out at nisi prius. 2 Stra. 113.

This action was brought by the plaintiff as indorsee of a promissory note, and on trial the note was produced endorsed by the drawee, but not superscribed; and the question on the point reserved was, Whether, or no, after the objection taken, the indorsement to the plaintiff could be supplied in court? Held, *per cur*. That the words, *pay the contents, &c.* may be put or set over the name endorsed in court. The property is transferred by the endorsement; and where the endorsement appears to be superscribed, the court never enquire when the superscription was written. This determination was in favour of justice, honesty and trade; and the practice was settled *per Pengelly*, Lord *Raymond*, and Lord *Hardwicke*, at *nisi prius*, a release to make a man a witness (which is a stronger case than this)

The words, "Pay the contents, &c." may be put over the name indorsed, in court. 2 Barn. Not. C. P. 361. * Postlethw. 262. O Comyn. 311.

Promissory Notes.

is constantly suffered to be executed in court. No inconvenience will arise by this practice. In case of a set off, where an indorsed note is set off by a defendant against a plaintiff's demand, it must be proved that the name of the indorser was written before the plea pleaded. Rule, that the postea be delivered to the plaintiffs. *Lucas against Marsh. *Thead v. Lovel. O More v. Manning.*

May be indorsed
by administratrix.
2 Stra. 1260. 2
Barn. Not. C P.
137.

3. On error from C. B. it appeared to be an action by indorsee of a promissory note indorsed by a woman as administratrix. A demurrer to the declaration, and judgment for the plaintiff.

It was objected, that an administratrix was not within the custom of merchants in the case of bills of exchange; and the statute 3 Ann. c. 9. makes notes assignable only in the same manner as bills of exchange are. *Sed, per curiam*, we cannot say this upon a demurrer. It should have been pleaded, or found not to be within the custom: and it is every day's practice to have indorsements made by executors. It was then objected, that there was no profert of the letters of administration. *Sed, per curiam*, that is only required where the action is by an administrator, but not where a third person only derives through one. The judgment was affirmed. *Robinson v. Stone.*

Indorsement by
feme covert void.
Stra. 516.

The plaintiff declared, upon a promissory note made to a *feme covert*, and indorsed by her to him; and on argument judgment was given for the defendant, the right being, in point of law, vested in the husband, and the wife having no power to dispose of it. *Connor v. Martin.*

Feme covert's
notes indorsable
by husband only.
3 Rac. Abr. 610.
13 Mod. 246.

A note payable to a *feme sole*, or order, who afterwards marries, can only be indorsed by the husband.

“ Falsly

“ Falsly making, forging, or counterfeiting,
 “ or causing, or procuring, to be falsly made,
 “ &c. or willingly aiding, or assisting, in the
 “ false making any indorsement of any pro-
 “ missory note for the payment of money,
 “ with intention to defraud any person what-
 “ soever, or uttering, or publishing as true,
 “ any false, &c. indorsement of a promissory
 “ note, with intention, &c. knowing the same
 “ to be false, &c. is felony, without benefit
 “ of clergy.”

The defendant was indicted for forging an indorsement of a note of eight hundred pounds, which indictment was preferred against him at Hick's Hall, and was afterwards removed up by *certiorari* into this court: and now the attorney-general moved, that it might be tried at the bar next term. He said, this was not indeed a prosecution carried on by the direction of the crown, but only supported upon the expence of a private person. However, he mentioned two cases, where the court had granted the like motion with this, upon the application of the king's attorney. One was the case of *the king* and *Ward*; the other the case of *the king* and *Johnson*. The attorney-general said too, that strictly this matter cannot be tried at the sittings without his leave; for every writ of *nisi prius*, in criminal cases must be signed by him, to have his consent. But the court said, if the attorney had made this motion in right of his office, at the instance of the crown, it was certainly demandable of right, though the trial was moved to be had in an issuable term. But here the attorney moves only as council, and therefore he can only apply to the court upon the ordinary circumstances, which these motions are granted on,

To forge an indorsement of a promissory note, death. 2 Geo. II. c. 25. made perpetual by 9 Geo. II. c. 18.

Barnard, K. B. 88. 2 Stra. 816.

on, which are the length or difficulty of the case. And here, they said, nothing of this was pretended. The chief justice said, he remembered very well the rule for granting the trial at bar in that case of *the king* against *Johnson* was founded upon the length of examination, that would be required in that case. And as to the case of *the king* and *Ward*, that prosecution was carried on by the direction of the House of Lords, which might influence the court to have had the trial at the bar; and as to what the attorney said about the writs of *nisi prius* being signed by him, the court said, he may very well refuse it in prosecutions at the instance of the crown; but it is never done in prosecutions of this nature, which are considered as the suits of private people, though the king's name is made use of. Judge *Probyn* said, that this was a forgery of a note of hand, and concerned public credit in general; and therefore he did not know but the consequences of this case might make it something distinguishable from others. However, the motion was afterwards granted upon the attorney's saying, that he had since got the king's command to carry on this prosecution. *The king v. Hales.*

4. Indorser and Indorsee.

The innocent indorsee of a gaming note can maintain no action against the drawer. 2 Stra. 1155. See Gilb. Hist. and Pract. of Chanc. 289.

1. UPON a case stated at *nisi prius*, in an action by the plaintiff as indorsee of several promissory notes, it appeared that the notes were given by the defendant to one *John Church*, for money by him knowingly advanced to the defendant to game with at dice; and that *Church* indorsed them to the plaintiff for a full and

and valuable consideration; and that the plaintiff was not privy to, or had any notice, that any part of the money for which the notes were given had been lent for the purpose of gaming.

Upon this a question arose upon the statute 9 Ann. c. 14. sect. 1. which says, "That all notes, where the whole, or any part of the consideration, is money knowingly lent for gaming, shall be void to all intents and purposes whatsoever;" Whether the plaintiff could maintain this action against the defendants? And after two arguments, the court were of opinion he could not, for it is making it of some use to the lender, if he can pay his own debts with it; and it will be a means to evade the act, being so very difficult to prove notice on an indorsee. And though it will be some inconvenience to an innocent man, yet that will not be a ballance to those on the other side: and the plaintiff is not without remedy, for he may sue *Church* on his indorsement: and it is but the common hazard of taking notes of infants or *feme covert*s. As to what *Holt* said in **Husley v. Jacob*, it was not the point adjudged; and the chief justice said, he had seen a report wherein notice was taken, that all the learned part of the bar wondered at it. *Bowyer v. Bampton*.

* Salk. 344, 356.
5 Mod. 175.
Holt 328. 12
Mod. 96. Co-
myn. 4. Lord
Raym. 87. 3
Keb. 254, 259.

If a promissory note be indorsed, and afterwards lost, and passed, in way of trade, to a third person, for a valuable consideration, the indorsee may have trover for the note against the third person.

Indorsee may maintain Trover for a note lost.
9 Mod. 47.

The third indorsee of a promissory note kept it from the first of *November* to the seventh of *January*, without receiving it of the maker

Non-suited for his neglect in not demanding it of the drawer.
Stra. 707.

maker of the note: and in an action against the first indorsee, without notice, the plaintiff was nonsuited for his neglect. *Pepys v. Sir John Lambert.*

Where a man has owned his hand to an indorsement, he shall not set up a defence of forgery by similitude. 2 Stra. 1051.

The defendant was sued as indorser of a note; and it was proved, that a discounteer sent the note to the defendant, who looked on it, and said it was his hand; and the note, which had some months to run, would be paid when due; the chief justice refused to let the defendant in to shew forgery by similitude of hands, since it would tend to destroy all negotiation of notes and bills. But he seemed inclined to allow proof of actual forgery, if the defendant could have shewn it, which he could not; and the plaintiff obtained a verdict. *Cooper v. Le Blanc.*

Whether indorsee giving drawer time, discharges the indorser. Postlethw. 261.

One *Slaughter*, a clerk in the Exchequer, gave a promissory note to *Gekie*; *Gekie* indorsed it over to *Webb*, who indorsed it to the defendant, who indorsed it to the plaintiff. The note was not payable till six months after date, and, about a week after it became due, the plaintiff, by his attorney, demanded the money of *Slaughter*, who refused payment, and desired some time of forbearance; which the plaintiff's attorney refused to give, but afterwards the plaintiff himself gave him a month's time. This was in *August* last: and the month expiring before the beginning of Michaelmas term, the plaintiff, the first day of the term, filed a bill in the Exchequer against *Slaughter*, which was as soon as he could be sued by reason of his privilege; and on this bill obtained judgment: but, *Slaughter* proving insolvent, the plaintiff brought this action against *Gray*, the indorser. The question was, Whether, if the indorsee gives time to the drawer of the note,

note, it does not discharge the indorsors. The chief justice said, the time for the indorsee to demand the money of the drawer was settled to be a reasonable time. A verdict was given for the plaintiff. *Crosse and Gray*.

Case by original in B. R. and declares against the defendant, as indorfor of a promissory note; and after setting out the note and indorsement, he goes on, that, *virtute inde*, the defendant became chargeable with the payment of the money, *secundum tenorem*, of the indorsement. The defendant, upon *oyer* of the original, pleads in abatement, that the charge against him ought to be according to the tenour of the note, and not of the indorsement. And *Strange, pro def.* insisted that it might be, that the indorsement appointed the money to be paid at a different time from what is mentioned in the note; which are terms that the indorfor cannot lay upon the party who made the note. Suppose the note be payable on the first of *May*, surely the party to whom it was given cannot say, "I appoint the contents of this note to be paid to J. S. upon the first of *April*?" Or, if he should, yet the other will not be bound to pay it till *May*; and if he is charged, according to the terms of the indorsement, his only remedy must be, to traverse the being charged otherwise than according to the tenor of the note. And as to the objection, that in counts upon promissory notes there is no occasion to lay any express *assumpsit*, and therefore the whole may be rejected. He answered, that where the pleader does not rely upon the first part of the case he makes, but goes on further, and alledges other matters; he by that gives the other side an opportunity of traversing the last matter; as *Lutw. 108*.

The charge against the indorfor may be laid *secundum tenorem* of the indorsement, against the drawer *secundum tenorem billæ*.
Stra. 478.

Sed,

Sed, per curiam, there is no occasion to pray an aid of that objection here, where the action is against the indorser, it is true he cannot lay a charge upon the giver of the note in a manner different from the terms of it; but he may charge himself if he pleases, for every indorsement is the same as making a new note; and if the note be payable on the first of *May*; and the indorsement appoints it to be on the first of *April*. As to the indorser this is a promissory note payable on the first of *April*. If this was an action against the giver of the note, there might be more in the objection. *Respondes ouster agard. Smallwood v. Vernon.*

Where part of a note is received of the drawer, the indorser is not liable to be resorted to for the rest. 2 Stra. 745.

In an action by the indorsee of a promissory note against the indorser, it appeared, the plaintiff had after the indorsement received part of the drawer of the note; and it was held to be a taking upon himself to give the whole credit to the drawer of the note, and absolutely discharged the indorser; so the plaintiff was nonsuited. *Kellock v. Robinson.*

There must be a demand on the drawer of a note before the indorser can be charged. Stra. 646. 2 Stra 1887. Stra. 441, 515. See 2 Barnard K. B. 206. Law of bills 70. pl. 17. contrary.

In an action against the indorser of a promissory note, the chief justice directed the jury to find for the defendant, because the plaintiff had not proved diligence to get the money of the drawer; being of the old opinion, that the indorser only warrants upon the default of the drawer. *Syderbottom v. Smith.*

* *Collins v. Buttler.*

If indorser pays part of a note, demand on the drawer is not necessary. 2 Stra. 1246.

In an action upon a promissory note by the indorsee against an indorser, it was proved that the defendant had paid part of the money; and chief justice *Lee* held that sufficient to dispense with the proving a demand upon the maker of the note. *Vaughan v. Fuller.*

9. Action on a promissory note against the indorser.

At trial, before chief justice *Willes* at Guildhall, it was doubted, whether the plaintiff ought not to prove a demand of the drawer before the action brought; the matter on proof was left to the jury, whether a demand was made or not?

Whether a demand was made on the drawer, is a fact to be left to the jury. *Comyn. 579.*

On motion for a new trial, judge *Fortescue* mentioned the case of *Devise and Mason*, 1 *Geo. II.* in Common Pleas; wherein it was agreed by the court, that there ought to be a demand of the drawer, for the indorser undertook conditionally only if the drawer did not pay.

Indeed, if a note be forged, chief justice *Holt* held the indorser liable though no demand.

And indeed no demand can be, for when a note is forged there is no drawer.

So on a note payable to a man, or bearer, no demand need be from him to whom it is made payable.

But a new trial was denied, for the evidence of the demand was left to the jury, who were the proper judges of that fact, and knew best the course of dealing. *Pardo, versus Fuller.*

Assumpsit on promissory note by the defendant to pay *William Welch*, or order, fifty pounds, for value received; that *William Welch* indorsed it over to the plaintiff, in consideration whereof the defendant promised to pay to the plaintiff, who, though often requested, refused, &c.

In an action against the drawer of a note, plaintiff need not allege notice of the indorsement to the defendant. *Comyn. 563.*

Defendant demurs, and shews, for cause, that the declaration did not alledge notice to the defendant of the indorsement; and relied on case 2 *Mod. Ca. 43. Lawrence and Jacob*; where, after verdict and judgment for the

the plaintiff, the judgment was reversed in error for that cause; *sed non allocatur*; for that case is misreported, for justice *Fortescue* produced the paper book in that case, and said, it was *pasch.* 8 *Geo.* and that the judgment was affirmed, and on the authority of that case, and on the reason of the thing; for the defendant, by his demurrer, admits that, in consideration of the premisses; *viz.* defendants making the indorsable note, and the indorsing it to the plaintiff, the defendant assumed to pay the money according to the tenor of the note.

Judgment was given for the plaintiff by the whole court. *Skip v. Hook.*

Indorsee of administrator may declare without profert of letters of administration
2 Barn. Not. C
P. 137. 2 Stra.
1260.

Action brought on promissory note, payable to A. B. or order, and indorsed to plaintiff, by the administrator of A. B. demurrer to the declaration, and two causes assigned; first, that the plaintiff declared, without a *profert in cur.* of the letters of administration of A. B. and secondly, that it did not appear by whom the same was granted. A third objection was taken at the bar; *viz.* that an executor, or administrator, cannot assign a promissory note, so as to give an indorsee an action in his own name. The first and second objections were over-ruled because the letters of administration cannot be supposed to be in the custody or power of the plaintiff, but of the administrator himself; and on trial it would be incumbent on the plaintiff to shew the person who indorsed the note to him to be the proper administrator of A. B.

The third objection over-ruled, because it has been the constant practice among merchants for executors and administrators to indorse both promissory notes and bills of exchange; and the court will endeavour to adapt

adapt the rules of law to the course of trade; and is warranted in this opinion by the words of the statute 3 and 4 *Ann. c. 9. sect. 1.* which says, that promissory notes are to be indorsed in like manner as bills of exchange. The equitable interest is vested in the administrator, who, before the statute, might assign his equitable, and since his legal, interest. * *Comyn. 312.*
 * *Moor* against *Manning*, Mich. 5 *Geo.* in C. B. Held, that whosoever has the absolute property, may assign a note payable to order. Judgment for plaintiff. *Stone* against *Rawlinson* and another.

4. *Venue.*

RULE to shew cause why the *Venue* should not be changed, was discharged, the declaration containing (*inter alia*) a count on a promissory note, plaintiff consenting at the peril of a nonsuit, to give evidence on the promissory note. * The Duke of *Bedford* against *Bray*.
 † *Everest* v. *Sansum*. ‡ *Ward* v. *Colclough*.

In an error upon a judgment in the court of *Litchfield*, Mr. * *Parker* took two exceptions; one was to the first count, for its being upon a promissory note for value received, and yet no *Venue* laid where the value was received; the other was to the 2d count, for its being upon a *computasset*, and yet no *Venue* laid, where the several *items* of the account arose; whereas, he said, that was necessary to be set forth, in order that there might be a consideration shewn for this action. The first objection was easily got over, because it would have been a variance to have lain the note in any other way: and to the other, the court observed, that nothing is necessary to be set forth in a declaration, but what is the cause of the action; and
 N the

* Afterwards earl of Macclesfield.

Venue cannot be changed in an action on a promissory note.

* 2 Barn. Notes C. P. 390.

† Ibid. 391.

‡ Cas. of Pract. C. P. 119. See Andr. 66.

Barnard. K. B. 128.

the cause of an action is that which is necessary to be produced in evidence upon a trial. Now here he said, the cause of action is the stated account; and that is of itself a sufficient consideration to found an *assumpsit* upon, and the several *items* of it are of no manner of use in such case upon this action: and judge *Reynolds* observed, that an account adjusted does not only carry with it a consideration for a new *assumpsit*, but likewise extinguishes the remedy that lay upon the account before. Accordingly they affirmed the judgment. *Henry versus Berklet.*

5. Evidence.

Evidence admitted that might have been produced before at law. Bunb. 175.

A Judgment was obtained at law in an *assumpsit*, upon an absolute promissory note for fifty pounds against the plaintiff *Snowball*, who now brings his bill to be relieved, suggesting the note was really agreed to be conditional; viz. "That unless *Ram's* insurance rose to " one hundred pounds *per cent.* I, the now " defendant, give you my word I will never " trouble you for the money."

Parol Proof to explain the intent of a note. See Stra. 674. Sel. Cas. of Evid. 20.

It was objected for the defendant, first, That the plaintiff ought not to be permitted to enter into this evidence now, because he might have done it at law, either upon the general issue, or by pleading specially.

Secondly, That the plaintiff ought to give parol evidence to prove the intent of a note in writing under hand.

But, *per curiam*, (*dubitatante Eyre*, chief baron) the plaintiff was permitted to go into this evidence, and was relieved; and baron *Price* said, he could not distinguish this case from that of lady *Clarges* versus *Williams* in this court, on the twentieth of February, 1723. *Snowball v. Vicaris.*

A point

A point was reserved at the sittings of *nisi prius*, whether the proof of the indorser of a promissory note, his acknowledgment, that the name indorsed on the said note was his hand writing, be sufficient to prove the indorsement in an action brought by the plaintiff as indorsee against defendant as drawer. The objection was, That no person's confession, but the defendant's himself, can be evidence, and the indorser's hand must be proved. The objection was held good; and the verdict, as to the second promise in the declaration, was ordered to be vacated. *Hemings against Robinson.*

Indorser's acknowledging his hand, not sufficient evidence against the drawer. Barn. Notes C. P. 317.

In *assumpsit* upon a promissory note, there was judgment by default; and on executing a writ of inquiry, the plaintiff did not produce the subscribing witness, but offered other evidence of its being the defendant's hand. And the court held, this was sufficient; for the note being set out in the declaration, is admitted, and the only use of producing it, is to see whether any money is indorsed to be paid upon it. *Bevis v. Lindfell.*

After judgment by default, note set out in declaration need not be proved. 2 Stra. 1149.

Inquisition taken on a writ of inquiry of damages set aside, for want of the plaintiff's proving a promissory note set forth in the declaration, the plaintiff's attorney insisted, before the sheriff and jury, that the note was admitted by the defendant's suffering judgment; and the jury found the sum mentioned in the note for damages, without any proof; which was held unwarrantable. *Ellis v. Wall.*

Indorsement on executing writ of inquiry must be produced and proved; pleading is not a sufficient admission of them. 2 Barn. Notes C. P. 192.

In an action upon a promissory note, there being a subscribing witness, the chief justice would not allow any other to prove the hand, without shewing where the witness was, and that he could not be produced; and this, on the general rule, that the law requires the best

Subscribing witness to a note must be produced. Sel. Cas. of Evid. 76.

evidence the thing is capable of. *Seaward v. Powell.*

Comparison of hands is sufficient evidence. *Gilb. Law of Evid. 112.*

The comparison of hands is sufficient evidence of notes, without any other witnesses who saw the party write it.

6. *Equity and Injunctions.*

How far an injunction is proper to be granted to stay the proceedings in an action on a note. *Barnard K. B. 362.*

THE defendant here was plaintiff in two actions, one of which was upon a bond, the other upon a promissory note. The present plaintiff had upon this obtained an injunction, furnishing an account, and now upon bill and answer, the case appeared to be, that some years ago the duke gave this bond to the defendant; and some time after, being colonel of the first regiment of dragoons, sold the agency of this regiment to the defendant, but made him find security to account with him for some profits concerning it. Soon after the duke resigned his commission, and the defendant upon this complaining, that he must be turned out, the duke gave him this promissory note. A sum of five hundred pounds was borrowed upon the credit of it of one *Lisle*. The defendant acknowledged in his answer, that there was this account, but believed he had fully accounted. But whether, upon the whole matter, the injunction should stay, was the question. The chief baron declared his opinion to be very clear, that, as to the action upon the bond, the injunction ought to be dissolved, because the matter of account has no kind of relation towards it. As to the note, he thought that not so plain, because the note does seem to relate to the same matter as the account. The account related to the agency, and so does the note. But yet,

yet, he said, as nothing of this appears upon the face of the note, and as money has actually been lent upon it, as being a negotiable one, he inclined to be of opinion, that the injunction ought to be dissolved as to this action too. Baron *Carter* differed with him in opinion as to the second point; but the two other barons agreed with him in both. However, upon the duke's offering to pay Mr. *Lisle* his five hundred pounds upon the note, the court ordered the injunction to stay as to this action. The duke of *Montague* and *Burroughs*.

Bobeme was master of a vessel, and *Congreve* and *Barker* were traders living at *Waterford* in *Ireland*. *Congreve* and *Barker* had dealings with *Bobeme*, and *Bobeme* gave them a promissory note in a certain sum of money. This note was indorsed to *Porter*, who was an agent for them in *England*. But the intent of this indorsement merely was, that *Porter* might recover the money which the note was given for, and be accountable to them for it. *Porter* accordingly brought his action upon the note against *Bobeme*; bail was given in that action, and he recovered judgment in it.

The present bill was brought by *Bobeme* against *Porter*, *Congreve*, and *Barker*, setting forth an account that *Bobeme* had with *Congreve* and *Barker*; and praying an injunction to stay execution upon this judgment. *Porter* put in his answer, and by that answer the fact appeared to be the purport before mentioned. *Congreve* and *Barker* were served in *Ireland* with subpœnas to answer this bill; but they refused to put in an answer to it, and were served with an attachment in *Ireland* upon that account.

How far there must be a very strong equity appearing to intitle plaintiff to an injunction in case of a note. *Barnard Ch. Rep.* 353.

A motion was now made, that the order might be discharged, whereby an injunction was granted till the coming in of the answers of the several defendants. On the other hand it was prayed that upon the facts appearing as they did on the answer which was come in, the injunction might be continued to the hearing.

Lord chancellor said, It has been represented that the writing which *Boheme* signed, was a bill of exchange, and that it was paid over into the hands of one who was only a factor or agent for *Congreve* and *Barker*. If this had been so, there must have been a very strong appearance of equity to have intitled the plaintiff to an injunction; though, in other sort of cases an injunction would be continued to the hearing without staying for the answers of any such defendants, who appear to live beyond sea: but in the present case this is only a promissory note, and not a bill of exchange.

How far it will be an ingredient for continuing an injunction till the hearing, that the note in question is a stale one.

It is a note too given so long ago as 1736; which makes the case less favourable than if the note was given recently. This note was sent over to *Porter* to be made use of by him merely as a factor or agent for *Congreve* and *Barker*. *Porter* must be considered as a trustee for them; for tho' it is true, that there was an open account depending between him and them, and credit was given for that note, yet there was nothing done subsequent; by which that note was considered as his own. The persons really intitled to the benefit of this note, live at *Waterford* in *Ireland*, a place that is within the king's dominions. They have been served with subpœnas to answer this bill, and with attachments, for not putting in their answers; and bail has been given in this action, as this is so, it would be extremely hard that the injunction

junction should not, at present, be continued. Howsoever, his lordship said, that he would not now continue it to the hearing, but only till the answers of *Congreve* and *Barker* should come in, and so his lordship was pleased to order accordingly. *Boheme v. Porter*.

7. *Stealing, Forging, and Losing them.*

“Stealing or taking by robbery any promissory * notes for the payment of any money, being the property of any other person or persons, or of any corporation, is felony of the same nature, and in the same degree, and with or without benefit of clergy, in the same manner as it would have been, if the offender had stolen, &c. any other goods of the like value with the money due on such notes, or secured thereby, and remaining unsatisfied.”

To steal notes death. 2 Geo. II. c. 25. sect. 3. made perpetual by 9 Geo. II. c. 18.

* Quere, whether it be felony within this statute to steal one single note, as the act mentions notes in the plural number only, for in the trial of Coke and Wood-

burn, upon the maiming act (22 and 23 Car. II. c. 1.) the defendant, Coke, (inter alia) in his defence, says, That, by 1 Ed. 6. c. 12. Clergy is taken away from such persons as shall be convicted of stealing horses, &c. (in the plural number) yet, so scrupulously did the judges adhere to the letter of this law, that there was forced to be another statute made: viz. 2 and 3 Ed. VI. c. 33. to enact, that a person convicted of stealing One horse, should be ousted of his clergy, in the same manner as if he had stolen Two. See the preamble (which my lord Coke says is the key to the enacting part) of the statute, and Dy. 99. pl. 59. whereby what the said defendant, Coke, observed, seems to be good law.

“Falsely making, forging, or counterfeiting, or causing, or procuring, to be falsely made, &c. or willingly acting or assisting in the false making, &c. any promissory note for the payment of money, with intention to defraud any person whatsoever; or uttering, or publishing, as true, any false, &c. promissory note, with intention, &c. knowing the same to be false, &c. is felony without benefit of clergy.”

To forge notes death. Sect. 1 of the same statute.

If a promissory note be *indorsed*, and afterwards lost, and *passed in way of trade* to a third

Notes lost. 9 Mod. 47.

Promissory Notes.

person for a valuable consideration, the indorsee may have *trover* for the note against the third person.

8. *When deemed payment.*

Holt's Rep. 122.
6 Mod. 147.

THE defendant took up several goods of the plaintiff, who sent his servant with a bill to him for the money. The defendant orders the servant to write him a receipt in full of the bill, which he did; and thereupon he gave him a note upon a third person, payable in two months. The master sent several times to the third person, to present him the note, but could not get sight of him within the time; the party breaks, and all this appearing in evidence, and that the defendant went to sea the next day after he gave the note; now this action was brought against the defendant for the money.

Holt, chief justice. If a man gives a note upon a third person in payment, and the other takes it absolutely in payment; yet, if the party giving it knew the third person to be breaking, or to be in a failing condition, and the receiver of the note uses all reasonable diligence to get payment, but cannot, this is a fraud, and therefore no payment; and here was no laches in the plaintiff, for the party failed before the money was payable. The chief justice directed for the plaintiff. *Popley v. Asbley*.

When a note a
good discharge of
a debt. Show.
155.

A note drawn on A. to pay money for value received is a good discharge of a debt, though the note be not paid, unless the creditors return the bill in convenient time, *per Holt*, chief justice. *Darrack v. Savage*.

The

The plaintiff was indebted to the defendant upon two notes, and the defendant obtained judgment at law against him for the money; and then desiring the defendant's forbearance, he told him, that if he would procure one *Defoy* to give him his note for the money, he would accept of it, and acknowledge satisfaction on the judgment, and deliver up the plaintiff's notes: and being to go forthwith out of *England*, he left the plaintiff's notes with his agent here, to be exchanged for *Defoy's*, in case the plaintiff procured them; and the plaintiff accordingly procured two notes, payable to the defendant, which he delivered to the defendant's agent, and took up his own notes; and the attorney at law staid all further proceedings, but would not acknowledge satisfaction on the judgment, having no orders for it from his client; and before *Defoy* paid any of the money, he failed, and then the defendant proceeded at law on the judgment; whereupon the plaintiff brought this bill to be relieved, and suggested that he had discounted the money with *Defoy*, and made him satisfaction; but he made no proof of any such thing; and therefore, at the hearing, his bill was dismissed by the master of the rolls; and this decree was affirmed by my lord keeper on appeal. *Grubarr v. Gairand.*

Eq. Cas. Abr.
146. pl. 9.

9. *Of Matters not reducible to any particular Head.*

ON rule to shew cause why the plaintiff should not deliver up a note to one *Avery*, which note *Avery* had paid, as one of the indorsors. The chief justice said, this was proved to be a forged note in the court of Exchequer;

How far the
court will order
a note to be de-
livered up. 2
Barnard K. B.
32.

chequer; to which Mr. *Strange* agreed, but submitted it, that *Avery* might, notwithstanding, bring an action upon it against the other indorsors. The court allowed this, and accordingly made the rule absolute. *Williams and Seagrave*.

Sel. cas. of evid.
20.

It was held that a promissory note cannot have such a condition annexed to it as will make it like a bond or escrow; for that the delivery here is not essential, as in the case of a bond. *Anon.*

Stra. 674.

In an action upon the case upon a promissory note, brought by the person to whom it was payable, the chief justice left the defendant in, to shew that it was delivered in the nature of an escrow; viz. as a reward, in case he procured the defendant to be restored to an office; which it being proved he did not effect, there was a verdict for the defendant. *Jefferies v. Austin*.

Note given upon
a S. S. contract
is a composition
within 7 Geo.
c. 31. as well as
a bond. Bunb.
108.

Upon a motion for an injunction upon a *Southsea* contract. The case was that the plaintiff had given three notes for the payment of the money. It was insisted that this was a contract neither performed or compounded, within the statute 7 Geo. and therefore ought to have been registered: and Mr. *Bootle*, who moved it, endeavoured to distinguish this case upon a note from that of a bond, (which had often been resolved to be a performace or composition) for that the bond was a specialty which distinguished the contract; but a note is to be taken as part of the subsisting contract: but the court, upon the first opening, were clearly of opinion, that those notes being for a less sum, were a composition, and denied an injunction. *Fotheringham versus Mozato & al.*

A note

A note was given upon a day, promising payment a year after. The person who gave the note became a bankrupt after the note was given, and before the day of payment; and the question was, Whether the bankrupt, being discharged *per stat. 5 Ann. and 5 Geo.* this note was discharged? And, *per three barons against Price*, it is not. *Long versus Bland.*

Note given by a bankrupt, payable at a future day, is not discharged by his certificate. *Bunb. 120.*

A *feri facias* was brought, in the name of the attorney-general, against Sir John Elwell, setting forth that there had an extent issued against Sir Matthew Kirwood; and an inquisition was taken thereon, which found Sir John Elwell indebted to Sir Matthew Kirwood, by two promissory notes, one for one hundred and fifty pounds, and the other for one hundred pounds; and prays that the defendant should shew cause why the crown should not have execution for this debt.

Interlocutory judgment does not emerge notes. *Bunb. 199.*

The defendant pleads, that he was not indebted by these notes, or either of them, *die inquisitionis*. The attorney general proved, only, Sir John's hand to the notes. The defendant gave in evidence, that Kirwood, before he failed, brought an action on these notes, and obtained judgment by *nil dicit*; and that a writ of inquiry of damages issued, and was executed, and thereupon a final judgment was had; and therefore, that he could not be indebted on those notes, because they were merged in judgment, according to *Higgins's* case.

But it appeared, that although the interlocutory judgment was entered before the inquisition was taken upon the extent, yet the writ of inquiry and final judgment were not executed and obtained until a long while afterwards; for the inquisition on the extent was upon the twenty-

Promissory Notes.

twenty-eighth of *November*, 5 *Geo.* the interlocutory judgment was before, but the writ of enquiry was not executed until the seventh of *February*, 5 *Geo.*

And thereupon the lord chief baron *Gilbert*, who tried the cause, immediately directed the jury to find, as they did, for the crown.

Debts are not bound till the teste of the inquisition.

Nota, First, By this plea it appears, that debts are not bound till the *teste* of the inquisition.

Secondly, That notes of hand are not merged by an interlocutory judgment, the debt not being ascertained before the writ of inquiry returned, and final judgment entered thereon. The *Attorney General* and Sir *John Elwell*.

Taking out execution against drawer and indorser both, is a contempt. *Stra.* 515.

The plaintiff brought two actions upon a promissory note, one against the drawer and another against the indorser, and recovered in both. And now *Weary* moved, that they having tendered the principal in one, and the costs in both, no execution might be taken out; which the court ordered accordingly, and said, they would have laid the plaintiff by the heels, if he had taken out execution upon both. *Windham* versus *Witber*. *Idem* versus *Trul*.

Whether a note given to a feme covert for money in her husband's life-time, be assets of the husband. *Bunb.* 288.

A man, as principal creditor, takes out administration to *J. S.* and prefers a bill against the widow, and also against *B.* for a discovery of the assets of the husband.

B. in his answer, insists, he has no other assets than five hundred pounds and one hundred pounds, which he submits to the court, whether they are the husband's assets or not.

As to the five hundred pounds, he says, that he being a relation of the wife, and observing her to live in great straits and difficulties, out of meer kindness and compassion, proposed to give her five hundred pounds to her own separate

separate use, for her better support and maintenance, (but this, as appeared by the defendant's proofs, was without the husband's privity); and in order to make such gift certain and sure to her, he gave her a promissory note, dated on the fourth of *February*, 1707.

“ I acknowledge to have received of *Mary Beverley* five hundred pounds, to be laid out upon the public funds, and for which I promise to be accountable.

“ *Barthol. Burton.*”

As to the one hundred pounds, he says, that, in the year 1709, the wife delivered, and deposited in his hands one hundred pounds, to be kept and secured by the defendant for her separate use.

He insisted also, that he frequently paid her sums of money in her husband's life time, and gave her cloaths, which he prayed an allowance for, out of the five hundred and one hundred pounds he submitted to account, but whether to the widow or to the administrator of the husband, referred to the judgment of the court.

This cause came on to be heard on *Thursday* the eleventh of *February*, 1724; and, *per totam curiam*, lord chief justice *Eyre*, *Price* and *Page* only in court) it was decreed, for the plaintiff, that this note of five hundred and the one hundred pounds, should be taken as part of the assets of the husband; but gave the defendant *Burton* allowance for what sums he had advanced to the wife in her husband's life-time, in discharge of so much of the principal sums of five hundred and one hundred pounds; and it appearing that he had made an advantage of this money, they would not decree him to account for the interest. *Hodges v. Mary Beverley and Burton.*

1. Bank,

Bank, Cash, and Goldsmiths Notes.

During the continuance of the Bank, no other company exceeding six, to borrow money on bills payable at less than six months. 6 Ann. c. 22. sect. 9. 7 Ann. c. 7. sect. 61. 3 Geo. c. 8. sect. 44.

Forging Bank bills or notes, &c. death. 8 and 9 W. III. c. 20. sect 36. One with lemon-juice takes out a receipt written on the inside of a Bank note, but called an indorsement, this held to be rasing an indorsement within this clause. 3 Wil. Rep. 419. Stra. 18.

Forging Bank bills or notes, &c. felony without clergy. 11 Geo. c. 11. sect. 6.

“ DURING the continuance of the Bank, no body politic, erected or to be erected, other than the said Bank, nor any other persons united, or to be united in partnership, exceeding the number of six persons, shall in *England* borrow any sums of money on their notes payable on demand, or in less than six months from the borrowing thereof.”

“ Forging or counterfeiting any sealed bank-bill made or given out in the name of the governor and company of the Bank of *England*, for the payment of any sum of money, or of any bank note of any sort whatsoever signed for the said governor and company, or altering or erasing any indorsement on any bank bill or note of any sort, shall be felony without benefit of clergy.”

“ If any person shall alter, forge, or counterfeit, any bank bill or bank note, made, &c. or shall erase, or alter, any such bill or note, or any indorsement thereupon; or shall tender in payment, utter, vend, exchange, or barter, any such altered, &c. bill, &c. or any erased, &c. bill, &c. or the indorsement thereupon, or demand to have the same exchanged, for ready money, by the said governor and company, or their successors, or any other person, knowing such bill, &c.

“ &c. so tendered, &c. to be exchanged, &c.
 “ to be altered, &c. and with intention to
 “ defraud the said governor, &c. such person
 “ shall suffer as in cases of felony.”

A bank bill, payable to A, or bearer, being given to A, and lost, was found by a stranger, who transferred to C, for a valuable consideration. C got a new bill in his own name; and by *Holt*, chief justice, A may have *Trover* against the stranger who found the bill; for he had no title, though the payment to him would have indemnified the Bank; but A cannot have *Trover* against C, by reason of the course of trade, which creates a property in the assignee or bearer. *Anon.*

Goldsmiths bills are governed by the same laws, as other bills of exchange and every indorsement is a new bill, *per Holt*, chief justice. *Hill* versus *Lewis*. * *Tassel* versus *Lewis*.

The notes of goldsmiths, whether they be payable to order or to bearer, are always accounted among merchants as ready cash, and not as bills of exchange. *Tassel* versus *Lewis*.

A goldsmiths note to pay, is evidence of his receiving money. *Ford* v. *Hopkins*.

The defendant, in each of these actions, at two of the clock in the afternoon, gave the plaintiffs, goldsmiths, notes in payment, which were tendered the next morning at nine, when the goldsmiths had a quarter of an hour before stop payment. The chief justice directed the juries, that the loss should fall upon the defendants, there being no laches in the plaintiffs, who had demanded their money as soon as was usual in the course of dealing, and that the keeping the notes till the next morning, could not be construed a giving new credit to the goldsmiths. And both juries found accordingly. *Moore* v. *Warren*. *Holme* v. *Barry*. The

Trover for a bank bill will lie against a person finding it, but not against his assignee. *Salk.* 126.

No difference between goldsmiths notes and bills of exchange. *Salk.* 133. *Skin.* 410. * *Ld. Raym.* 743.

Goldsmiths notes accounted as ready cash. *Lord Raym.* 744.

Evidence. *Salk.* 283. See *Gilb. Eq. Rep.* 154. and 4 and 5 *An.* c. 9.

Party receiving a goldsmith's note, and tendering it the next day according to usage, does not bear the loss. *Stra.* 415. *Salk.* 442.

Goldsmith's
notes left and
cancelled in or-
der to receive the
money, and re-
newed notes ta-
ken upon a stop,
does not throw
the loss upon the
taker of the
notes. Stra. 416.
* Stra. 450.

The defendant paid the plaintiffs, who were the *sword-blade* company, two goldsmiths notes, at three in the afternoon; the plaintiff's servant, the next morning, leaves the notes with the goldsmith, in order to have the money ready for him, as he came back a clearing; it being, as they proved, customary for the Bank, and the *Sword-blade company*, to send out their notes in the morning, and call for their money, as their servant returned in the evening: and the goldsmith, upon receiving the notes, always cancelled them, and got the money told out against the time it was usually called for. The notes, in this case, were brought early in the morning, and received and cancelled: and between four and five in the afternoon, the servant that left them called again for the money, when the goldsmiths had just stopt payment: upon which the servant takes new notes of the same tenor and date with the cancelled ones he left in the morning: and because the plaintiffs had done nothing but what was usual, in leaving the notes instead of taking the money when he first called in the morning, the chief justice directed the jury to find for the plaintiffs, which they did. *Turner et al. v. Mead et al.* † *Hayward and the Bank of England.*

Within what
time a gold-
smith's note
must be demand-
ed. Stra. 508.

Upon the seventeenth of *September*, being Saturday, about two o'clock in the afternoon, *Harrison* gave to *Manwaring*, in payment, a note for one hundred pounds by *Mitford* and *Martin*, goldsmiths, dated the fifth of *September*, payable to *Harrison* or order. The same afternoon, *Manwaring* pays away the note to J. S. *Mitford* and *Martin* paid all Saturday and Monday; and on Tuesday morning, as soon as the shop was opened, and before any money paid, J. S. came and demanded the
money

money, but *Milford* and *Martins* sloop payment: *Manwaring* paid back the money to J. S. and demanded it again of *Harrison*, who refusing to pay it, an action was brought. And on *non assumpsit* the chief justice told the jury, that giving the note is not immediately payment, unless the receiver does something to make it so by neglecting to receive it in a reasonable time; by which he gives credit to the maker of the note. He left it to them, whether there had been any neglect; and observed, that the note was payable to *Harrison*, who had kept it eleven days, and probably would not have demanded it sooner than *Manwaring* did, it appearing the goldsmiths were in full credit all the while. The jury desired they might find it specially, and leave it to the court, whether there was a reasonable time: but the chief justice told them, they were judges of that: whereupon they found, for the defendant, and declared it as their opinion, that a person who did not demand a goldsmith's note in *two* days, took the credit on himself.

Manwaring v. Harrison. * *Hoar* and *De Costa*.

† *East-India Company v. Chitty.* ‡ *Fletcher v.*

Sandys. § *Tassel v. Lewis.* §§ *Ward versus Evans.*

* 2 Stra. 910.

† 2 Stra. 1175.

‡ 2 Stra. 1248.

§ Lord Raym.

744.

§§ 2 Ld. Raym.

928.

An executor gave a legatee a bill on a goldsmith, but the legatee did not demand the same of the goldsmith; and the goldsmith breaks. It was held by the lord keeper, that the loss should be to the legatee; but if he had demanded it in convenient time, and the goldsmith had not paid it, but had broke, it would be no payment; but legatee might resort back to the executor for his legacy: and it was said, in this case, that four or five days should be a convenient time for this purpose. 2 Freem. Rep. 247. See 2 Freem. 257, where it was held, and admitted, that if a man receives a goldsmith's bill in payment for money, and he that receives the bill never demands it in three or four days time at the most, and afterwards the goldsmith breaks, that this neglect shall occasion the loss to fall upon the receiver; but if the goldsmith breaks in three days time, the loss shall fall upon him who gave the bill for payment; for although taking a goldsmith's bill is payment, *prima facie*, yet it is subject to that contingency, that the bill may be had if it be demanded in three days time; and that, the lord keeper said, was the practice in Guild-hall when he practised there: but in this case the plaintiff was offered his choice at the goldsmith's shop, to have either his money or a bill; and he chose a bill; and the next day the goldsmith broke: and therefore the loss falls not upon the party who paid the money, but upon the plaintiff; for it was his own fault that he would not take his money. See 2 Sflow. 296. 12 Mod. 222, 521.

Bearer of a goldsmith's note cannot maintain an action. Lord Raym. 180, 181.

But if it be payable to order, the indorsee may bring an action.

Case. The plaintiff declares, *quod inter mercatores et alios negotiantes intra hoc regnum*, there is, and time whereof, &c. hath been a custom, that if any merchant, or other trader, make a bill or note in writing, by which he assumes to pay to any other person, or the bearer of the bill, such a sum of money, that then such person, who makes such note, is bound by it, to pay such sum to such person to whom the note is made payable, or to the bearer thereof: then the plaintiff shews, that the defendant, *Sedgwick*, being a goldsmith, made a note in writing, by which he promised to pay to one *Mason*, or to the bearer thereof, one hundred pounds; that *Mason* delivered the note to the plaintiff for one hundred pounds in value received; and that, for non-payment of this one hundred pounds by the defendant to the plaintiff upon demand, the plaintiff brought this action against the defendant. *Non assumpsit* pleaded, and verdict for the plaintiff. And it was moved in arrest of judgment, by serjeant *Wright*, that this action could not be brought in the name of the bearer, but it ought to be brought in the name of him to whom it was made payable. *Quod fuit concessum per curiam*. For the difference is, where the note is made payable to the party or order. In the latter case the indorsee has been allowed to bring the action in his own name; for there can be no great inconvenience, because the indorsement of the party must appear upon the back of the note, or some other thing, sufficiently intimating his assent; but where it is payable to the party, or bearer, if the bearer be allowed to bring the action in his own name, it may be very inconvenient; for then any one who finds the note by accident may bring the action.

action. And, though this last has been frequently attempted, it has never yet prevailed; and therefore, in a case in this court between *Horton* and *Cogs**, the goldsmith, this difference was taken and agreed; and the judgment there (being the same case with this principal case) was arrested; but the court said that the bearer might bring the action in the name of him to whom the note was made payable; and judgment was arrested *nisi*, &c. and the same point was resolved between *Hodges* and *Steward*†: but there it was resolved, that the indorsement to the bearer binds the party who immediately indorses it to him. The principal point was also resolved between *Escourt* and *Cudworth*. *Nicholson v. Sedgwick*.

* 3 Lev. 294.

† Salk. 125.

Indorsement binds the indorser.

If A buy a thing of B, and gives him a goldsmith's bill in payment, which vendor accepts without exception; if the goldsmith was worth nothing, and A does not know it, it is a good payment. *Secus*, if A knew him to be in a failing condition, *per Holt*. *Anon*.

12 Mod. 517.

If A owes B money, and he gives him a goldsmith's note in payment, the debt is not discharged till B receives the money, if there be not default in him that it was not paid; or if he does not at the receipt of the note give an acquittance for the debt to A, *per Holt*, chief justice. *Ward* versus Sir *Peter Evans*.

12 Mod. 521.

If A and B be two goldsmiths, and B gives a note to C for one hundred pounds, A gets possession of it, and brings it to B, and takes a new note for it, giving up his former, it is no payment; *per Holt*, chief justice. 12 Mod. 521. *Same case*.

Ibid.

The court held, that a goldsmith's note is no payment, being only paper, and received

2 Salk. 442.

conditionally, if paid, and not otherwise, without an express agreement to be taken as cash. *Ward v. Evans.*

When a goldsmith's note shall be deemed payment. Salk. 126. 12 Mod. 203.

A sells goods to B, and B is to give a bill in satisfaction. B is discharged, though the bill is never paid; for the bill is payment; but otherwise a bill should never discharge a precedent debt or contract; but if part be received, it shall only be a discharge of the old debt for so much. *Clark v. Mundall.*

9 Mod. 60.

A goldsmith's note was given in part of payment on a Saturday, and not offered till the Monday following to the drawer, when the cashier of the drawer cancelled the note, but not having money to pay it, gave a new note of the same date with the former. This is no new credit given to the drawer, but that the indorser is still liable. *Mead versus Caswell.*

Stealing goldsmith's notes death. 2 Geo. II. c. 25. sect. 3. made perpetual by 9 Geo. II. c. 19.

† See sect. 1 of "Stealing, forging, and losing promissory notes."

† See sect. 4 of "Bills of Exchange lost, forged, and stolen."

Equity. Eq. Cas. abr. 375, 376.

If any person shall steal, or take by robbery, any goldsmiths notes † for payment of money, being the property of any other person or persons, or of any corporation, notwithstanding they are deemed in law *chosen* in action, it shall be deemed and construed to be felony, of the same nature, and in the same degree, and with or without benefit of clergy, in the same manner it would have been if the offender had stolen any other goods of like value with the money due on such notes, or secured thereby, and remaining unsatisfied †."

A note of one goldsmith was taken in by another goldsmith, who gave his note for the same sum, and sent his dinner many times for the money; but at length the goldsmith failed. The second goldsmith was

was decreed to pay the money, though his note given by him was for so much received on account; and that he had entered in the margin of the other note, whom he had received it of, and so lord keeper affirmed a former decree made at the Rolls. *Trowell v. Sir Stephen Evans.*



INSURANCES.

1. *The Nature of them.*

3 Bac. Abr. 598
Postlethw. Dict.
Tit. Assurances.

* Tho' it be no
specialty, yet is a
sacred thing, be-
ing of great cre-
dit, and much
for the support,
conveniency, and
advantage of
trade. Skin. 54.

55.
† By 43 Eliz. c.
12, and 14 and
15 Car. II. c.
25, Commission-

ers were appointed for deciding of differences arising upon policies of insurance. See 3
Inst. 165. 4 Inst. 350. Styl. 166, 172, 173, 418. 2 Sid. 121. Show. 396. " By
" 4 and 5 W. and M. c. 15. sect. 14. Every person who shall insure, or be insured, any
" sum upon any goods imported from foreign parts, without paying custom, or of any
" prohibited

1. **I**NSURING is, where a man, for a cer-
tain sum, takes upon him the risque that
goods are to run in transportation from place
to place; and this custom, or usage, among
merchants, when they make any adventures at
sea, to give a premium, or consideration, to
corporations erected for that purpose, or to
particular persons, who have, from such cor-
porations, or particular persons, assurance of
or upon ships, goods, or merchandize, adven-
tured, or some of them, at such rates, or
prices, as the parties assures; and the parties
assured can agree, hath prevailed time out of
mind; and such kind of contract, or dealing,
is commonly called a Policy of Assurance*,
or Insurance; and was at first introduced, that
a merchant having a loss might not be un-
done, many bearing the burthen together,
and has several times received the countenance
and sanction of several acts of parliament †.

2. If

“ prohibited goods whatsoever, shall forfeit five hundred pounds. If any insurer will discover, he shall keep the premium, and be discharged of all penalties, and shall have the penalty laid on the person making such insurance. If the insured discover, he shall have back his premium, half the penalty, and be discharged. See Mol. b. 2. c. 7. sect.

“ 14, 15.
By 9 Ann. c. 6. sect. 57. 10 Ann. c. 26. sect. 109. It is five hundred pounds penalty to erect an office of insurance for births, marriages, christnings, and service, and one hundred pounds penalty for an old office making new insurance.

By 10 Ann. c. 26. sect. 68, 69, 70, 71, 72, an additional stamp duty of two shillings and four pence is laid on all policies of insurance made within the bills of mortality, under penalty of five pounds counterfeiting the stamp, vending, or using a counterfeit stamp on a policy, knowingly, is felony without clergy.

By 4. Geo. c. 12. sect. 3. If any owner of, or captain, master, mariner, or other officer belonging to any ship, shall willingly cast away, burn, or otherwise destroy the ship, or direct, or procure, the same to be done, to the prejudice of any person that shall underwrite any policy of insurance thereon, or of any merchant who shall load goods thereon, he shall suffer death.

By 6 Geo. c. 18. sect. 1. His majesty is enabled to grant two charters for erecting two corporations for insuring shipping and lending money on bottomry, which are now called the Roy 1 Exchange Assurance and the London Assurance; which corporations are to have perpetual succession, subject to redemption, or power of revocation, as is here undermentioned; the corporation to have liberty to chuse their governors, directors, officers, and servants, as should be prescribed in the charters; governors and directors to continue for three years, to have a seal, and be capable to purchase land not exceeding one thousand pounds per annum, and may sue and be sued in their corporate capacity.

By sect. 2. Each corporation to pay into the Exchequer three hundred thousand pounds towards discharging the debts of the civil government.

By sect. 5, 6, 7, Each to raise such sum as his majesty should direct, not exceeding one million, five hundred thousand pounds, for paying the fix hundred thousand pounds, and to enable them to pay losses and lend money on bottomry and government securities; which money is to be raised in general courts, by taking subscriptions, or by calls; and may be sold for that purpose; and persons refusing calls to pay eight pounds per cent. interest.

By sect. 8, May take up money to advance on parliamentary securities.

By sect. 9, 10, Stock transferrable, devisable, as personal estate, not to be taxed. Governors, directors, &c. may be members of parliament, but not to be bankrupt on account of such stock.

By sect. 11, To have power to make by-laws, as per charters,

By sect. 12, No corporation, or partnership, to insure ships, or lend money on bottomry, on penalty of forfeiting the money assured, and the policy to be void, and in case of bottomry the security to be void, and the contract to be usurious.

By sect. 13, Forging their common seal, or policies, felony without clergy.

By sect. 14, None to be governors, &c. or have stock in both corporations.

By sect. 15. The parliament, at any time within thirty-one years, from the date of the charters upon three years notice in the London Gazette, and fixed upon the Royal Exchange, and payment of three hundred thousand pounds to each corporation, may then, and not till then, void the said corporations.

By sect. 16, 17, If after thirty-one years, the king shall adjudge the continuance of the said corporations to be hurtful or inconvenient to the public, he may, by letters patent, void the same without any inquisition or scire facias; in which case the like powers shall never be grantable again.

By sect. 26. South-Sea and East-India companies may advance money on bottomry to their captains; &c.

By 7 Geo. c. 27. sect. 26, The corporation called the London Assurance, having paid into the Exchequer one hundred and eleven thousand, two hundred and fifty pounds, in part of three hundred thousand pounds; and having covenanted to pay thirty-eight thousand, seven hundred, and fifty pounds, the farther part thereof in three months; and the corporation, called the Royal Exchange Assurance, having done the like, the residue of the said sums, amounting together to three hundred thousand pounds, shall be released.

By 8 Geo. c. 15. sect. 25, The Royal Exchange Assurance and the London Assurance are subjected to pay double damages, besides costs, if the plaintiff shall recover against them only single damages and costs.

By 11 Geo. c. 29. sect. 6, The offenders mentioned in 4 Geo. c. 12, are excluded clergy.

By 11 Geo. c. 30. sect. 43, On all actions of debt against either of the corporations, called the Royal Exchange Assurance and the London Assurance, upon any policies under the common seal, for the assuring of any ships or merchandizes at sea, or going to sea, it shall be lawful for the said corporation to plead generally, that they owe nothing to the plaintiff; and in all actions of covenant against either of the said corporations, upon any policy under the common seal, for assuring any ship or merchandizes at sea, or going to sea, it shall be lawful for each of the corporations to plead generally, that they have not broke the covenant in such policy contained; and, if thereupon issue be joined, it shall be lawful for the jury to give such part only of the sum demanded, if it be an action of debt, or so much in damage, if it be an action of covenant, as shall appear upon the evidence, that the plaintiff ought in justice to have.

By sect. 44, When any vessel, or merchandizes, shall be insured, a policy duly stamped shall be issued, or made out, within three days at farthest; and the insurer neglecting to make out such policy, shall forfeit one hundred pounds, to be recovered and divided, as other penalties may be, by the laws relating to the stamp duties; and all promissory notes for assurance of ships or merchandizes at sea, or going to sea, are declared void.

Gen. Treat. of
Com. 74, 75.

Goods lost after
the owner has
taken them from
the ship into a
lighter, is no
charge on the in-
surer. 2 Stra.
1236. Postlethw.
Dict. 143. See
Ibid. 690. In-
surer is liable
where ship goes
back to perform quarantine. Ibid. 1243. A ship never heard of is presumed to be foundered at sea. Ibid. 1119.

2. If a ship be insured from the port of *London* to *Cadiz*, and, before the ship breaks ground, takes fire and is burnt, the assurers, in such case, shall not answer, for the adventure begun not till the ship was gone from the port of *London*; but if the words had been *at and from* the port of *London*, there they would, upon such a misfortune, have been made liable.

Gen. Treat. of
Trade. 70.

3. If the party who caused the insurance to be made, actually saw the ship wrecked, or had certain intelligence of it, such subscription will not be obligatory, for the same shall be accounted a meer fraud.

Gen. Treat. of
Trade. 70, 71.

So, likewise, if the assured, having a rotten vessel, shall insure upon the same more than she is worth, and afterwards gave order that going out of the port the ship should be sunk, or wrecked, this will be adjudged fraudulent and not oblige the insurer to answer.

Gen. Treat. of
Trade. 71, 72.

A vessel being come home in her voyage laden, the owners and master agreed together to sell the freighters goods privately, and then

to

to go some small distance out to sea, and there to sink the ship, and pretend she struck and foundered by extremity of weather. This being so contrived, the owners make a policy of insurance on the vessel. The goods were afterwards sold, and the master, with his own hands made a hole in the bottom of the ship with an iron crow, and conveyed himself and mariners a-shore, the ship being in a sinking condition. The master hereupon sent advice of the loss to the owners, who boldly demanded the money insured, and brought an action for the same: but before this cause came to a trial, the merchant that freighted the vessel commenced his action of trover for the goods against the owners, and therein the fraud was detected, and judgment given for the plaintiff, the merchant; also with this intimation, that if the owners proceeded in their action on the insurance, they must expect, that their practice and fraud would totally poison it; so they went no farther,

If goods be insured as the goods of an ally, when they are the goods of an enemy, it is a fraud, and the insurance not good. *Skin. 327.*

A insured a ship in which he had no interest, but with the words interest or no interest. The ship was taken by the enemy, and in their possession for nine days; but before it was carried *infra presidia*, it was retaken by an *English* man of war. The question was, Whether this was such a taking as to enable the plaintiff to recover the sum insured? The cause was argued by civilians on both sides, and the court seemed to be of opinion for the defendant. They thought the finding by the verdict, that the plaintiff had no interest in the ship would make no difference: first, because they never would be more favourable to an insurer, *non*

bona

10 Mod. 77.
When an assurance is interest or no interest, the plaintiff has no occasion to prove his interest, for the defendant cannot controvert it. *Comyn. 360.*
On a policy, interest or no interest, a recapture, after being in an enemy's port, will not avail the insurer. *2 Stra. 1250.* Same upon a ransom. *Ib.*
See *2 Stra. 1248.*
The owner, and not the freighter,

is liable for a
loss of gold sent
by the ship. 2
Stra. 1251.

bona fide, or a wagerer, than to one that insured *bona fide*: secondly, because to make a different interpretation of this deed from what is commonly put upon policies of insurance would be to run counter to the designs of the parties who have made use of the same words that are used in such policies; who have expressly provided for this very case by those words interest or no interest, which signify nothing at all, unless the same loss intitles to a recovery where the insurer has no interest, and where he has: and they held it to be very plain, that the property was not altered by the taking. It was directed to be argued the next term by common lawyers. *Assievedo v. Cambridge*.

Salk 144. 2
Ld. Raym. 840.

A ship insured was in her voyage seized by the government, and turned into a fire-ship. The question was, Whether the insurers were liable? *Holt*, chief justice, thought it was within the word Detention; but the cause was referred. *Anon.*

2. Baratry and Deviation.

Baratry, what.
Savary.

BARATRY, in marine commerce, signifies the stealing, embezzling, or any other ways altering of merchandizes, by the master or ship's company; and, in general, all the tricks, frauds, or male practices, which they pretty often use, in order to defraud the owner of the ship's cargo, or other persons concerned in it.

Signification of
the word Baratry
in a policy. 8
Mod. 231. 2
Ld. Raym. 1349.
Stra. 581.
Where a master
deviates for the

Insurance was against the perils of the sea, winds, pirates, and baratry of the master. It was found, by verdict, that the ship was lost *per fraudem et negligentiam magistri*. The court held, that every neglect of the master is not

not within this policy : and if he run away with the ship, or embezzle the goods, the merchant may have an action against him, but yet he may provide against it in another manner; *viz.* by insuring his ship and goods to secure himself against such acts of baratry; for it is reasonable that merchants, who venture a large share of their stocks, should secure themselves in what manner they think proper against the baratry of the master, and all other frauds; and this must be intended a fraud in the master, and not a bare neglect; so that this breach is well assigned; it being a general rule that it may be assigned in as general words as a covenant is: and if it had been assigned *per baraterium magistri*, it had been good; but it is not necessary to assign it in the very words of the covenant, for it is sufficient it is assigned in the sense. And they all agreed, that fraud is baratry tho' negligence might not. So the judgment was affirmed. *Knight v. Cambridge.*

Cause upon a policy which was to insure the *William* galley in a voyage from *Bremen* to the port of *London*, warranted to depart with convoy. The case was, the galley set sail from *Bremen* under convoy of a *Dutch* man of war, to the *Elb*, where they were joined with two other *Dutch* men of war, and several *Dutch* and *English* merchant ships, whence they sailed to the *Texel*, where they found a squadron of *English* men of war, and an admiral: after a stay of nine weeks, they set out from the *Texel*, and the galley was separated in a storm, and taken by a *French* privateer, and taken again by a *Dutch* privateer, and paid eighty pounds salvage: and it was ruled, *per Holt*, chief justice, that the voyage ought to be according to the usage, and that their going to the *Elb*, though in fact out of the way, was no deviation;

benefit of his owners, it is not baratry, tho' it may be a breach of contract. 2 Stra. 1173. If the mariners force the master to return, it is not baratry. 2 Stra. 1264. When owner of a ship can be guilty of baratry. See Postlethw. Dict. 147.

Deviation or not, must be construed according to usage 2 Salk. 445. An intention to deviate does not discharge the underwriter. 2 Stra. 1249. If the mariners force the master to return, it is no deviation. 2 Stra. 1264. Where the master deviates for the benefit of his owners, it may be a breach of contract. 2 Stra. 1173. If after a policy of insurance a damage happens, and afterwards in the same voyage a deviation, yet the assured shall recover for what happened before the deviation, for the policy is dis-

charged from the time of the deviation only. See *Show*, 129. *Salk.* 444. 2 Lord Raym. 840.

Cede de la Marine, 145, 146.

In policies warranted to depart with convoy, shall be intended without the wilful default of the master. 2 *Salk.* 443. *Show*, 320. *Carth.* 216, 217. 4 *Mod.* 58. *Holt.* 465. A ship that fails with the convoy, tho' hinder'd by the weather from taking sailing orders, departs with convoy. 2 *Stra.* 1250, 1251. A ship warranted to depart with convoy is insured during her voyage, during her way to the general rendezvous. 2 *Stra.* 1285. See *Mercat. Rediviv.* 277.

A policy avoided by a skirmish at sea. *Sol. Cas. of Evid.* 91.

Meaning of word "depart". 4 *Mod.* 60. 3 *Lev.* 320. *Salk.* 443. *Mod. B.* 2. c. 7. sect. 12. 10 *Mod.* 287. See *Lex Mercat. Rediviv.* 277.

tion ; for, till after the year 1703, there was no convoy for ships directly from *Bremen* to *London*, and the plaintiff had a verdict. *Bond v. Gonsales*.

In case of deviation, the insurers are not bound to return the premium, because they have begun to run a risque.

Action on a policy of insurance. The defendant pleaded *non assumpsit*, and the jury found the policy, by which insurers undertook against perils at sea, pirates, enemies, &c. from *London* to *Venice*, warranted to depart with convoy. *Et, per cur.* the words, "warranted to depart with convoy," mean only, that he will leave the port and sail with the convoy, without any wilful default in the master : therefore if, by default of the master, the ship is separated and taken, the insurers are not liable ; but if there be no default, the master having done all that could be done, and the ship is separated and taken by the enemies, the insurers are liable : so, if the ship be lost by stress of weather, for they insure against these by their own agreement. *Jefferier v. Legendra*.

A policy avoided by a skirmish at sea. *Sol. Cas. of Evid.* 91.

The word Depart is only *terminus aquo*. If the ship had departed from *London*, and came back again by fraud, this had been no departure within the intention of the agreement : and it was admitted and agreed, that, by the custom of merchants, these words (warranted to depart with convoy) are the words of the assured, and not of the assurer ; and that the assured is to find the convoy : and it was held by *Holt*, and the greater part of the court, that though the words were only to depart with convoy, yet they extend to sail with convoy all

all the voyage: but the separation being by tempest at first, and the convoy and ship never meeting afterwards, and he using his endeavour to meet with the convoy, and to go with it the rest of the voyage, and being again driven back by tempest, and taken by pirates, though the convoy remained all the time at *Torbay*, this shall not be such neglect in the convoy as shall discharge the insurer, who might have stayed at *Foy*, where he was driven, till the convoy came to him; and therefore gave judgment for the plaintiff.

J. S. having a doubtful account of his ship that was at sea, viz. that a ship, described like his, was taken, insured her without information to the insurers of what he had heard, either as to the hazard or circumstances, which might induce him to believe that his ship was in great danger, if not actually lost. The insurers bring a bill for an injunction, and to be relieved. And Lord *Macclesfield* decreed the policy to be delivered up with costs, but the premium to be paid back and allowed out of the costs. And his lordship said, that the insured had not dealt fairly with the insurers; that he ought to have disclosed to them what intelligence he had of the ship's being in danger, and which might induce at least, to fear that it was lost, though he had no certain account; for, if this had been discovered, it is impossible to think, that the insurers would have insured the ship at so small a premium as they have done; but either would not have insured it at all, or would have insisted on a larger premium; so that the concealment of this intelligence is a fraud. *De Costa versus Scanderet*.

What concealment of circumstances, or misinformation, &c. avoids a policy. 2 Wms. Rep. 170. 2. Eq. Cas. Abr. 635. Concealing on information of danger avoids a policy, tho' the loss does not appear by such danger. 2 Stra. 1183. See Laws of bills, &c. 195. pl. 3, to 205. and 200. pl. 4.

A policy

Skin. 54, 55.
 See 2 Salk. 445.
 Show. 323, 326.
 where this case
 is denied to be
 law by Holt,
 chief justice.

A policy of assurance was drawn from *Archangel* to *Leghorn*, and *assumpsit* being brought upon it, the defendant said, that the agreement before the subscription was, that the adventure should begin but from the *Downs*; but this agreement was not put into writing. This being but a meer parol agreement, may be altered or discharged by agreement by parol; but without it be put in writing, it shall be taken that the policy speaks the minds of the parties; for policies are things well known, and go as far as trade goes; and to suffer them to be defeated by agreements not appearing, is to lessen their credit, and to make them of no value, which yet are countenanced by two several acts of parliament. That the party may as well say, he is to have ten guineas premium though the policy says but three, as to say he insured but from such a place; viz. the *Downs*; when the policy says it was from *Archangel*.

Pemberton said, that policies were sacred things, and that a merchant should no more be allowed to go from what he had subscribed in them, than he that subscribes a bill of exchange payable at such a day, shall be allowed to go from it, and say it was agreed to be upon a condition. &c. when it may be that the bill had been negotiated; for, though neither of them are specialties, yet they are of great credit, and very much for the support, conveniency, and advantage of trade. *Kavies v. Sir Robert Knightly*.

12 Mod. 325.

If a ship be insured under Captain J. S. the part owners may change the captain without notice to insurers; *quære tamen*; for it might be the confidence and knowledge of the captain that might be an encouragement to the insurers. *Anon.*

On

On a policy of insurance on goods by agreement valued at six hundred pounds, and the insured not to be obliged to prove any interest, lord chancellor ordered the defendant to discover what goods he put on board; for altho' the defendant offered to renounce all interest to the insurers, yet referred it to a master to examine the value of the goods insured, and to deduct it out of the value or sum of six hundred pounds, at which the goods were valued by agreement. *Pypre v. Farr.* 2 Vern. 716.

If the policy of assurance run until the ship shall have ended, and be discharged her voyage, arrival at the port to which she is bound, is not a discharge until she is unladed. *Anon.* Skin. 243.

If a ship be insured from *London* to and a blank be left by the lader to prevent her surprize by the enemy. In her voyage she happens to be cast away, and though there be private instructions for her port, yet the assured must sit down by the loss by reason of the uncertainty; so, in case a blank be left in the policy for the value of the ship or lading, if a loss happens, and there be not words to supply this defect, the assured may endanger the policy. Mol. B. 2. c. 7. sect. 14.

The policies now a-days are so large, that almost all those curious questions that former ages, and the civilians according to the law marine, nay and the common lawyers too, have controverted, are now out of debate. Scarce any misfortune that can happen, or provision to be made, but the same is taken care for in the policies that are now used; for they insure against heaven and earth, stresses of weather, storms, enemies, pirates, rovers, &c. or whatever detriment shall happen or come to the thing insured, &c. is provided for. Mol. B. 2. c. 7. sect. 7. That what should be put on shipboard might be secured from the danger of enemies and storms by the public, each merchant proposed to himself certain gain, by their taking upon themselves the risque, in case an accident should happen to any of them

through stresses of weather. Liv. B. 2. c. 25. In the name of danger, against which insurance is made, every case that can happen on the sea, by tempest, enemies, thieves, reprisals, as they call arrests, and other methods used and not used, without the fraud and default of the contracting parties, or of the owner of the merchandize or ship. Grot. de Jur. Holl. p. 24.

If

Mol. B. 2. c. 7.
sect. 15.

* If there be thieves on ship-board within themselves, the master of the ship is to answer for that, and not the insurer, tho' the words of the policy insure against losses by thieves, yet they are to be intended against stealing thieves. Mal. Lex Mercator. 109.

If prohibited goods are laden aboard, and the merchant insures upon the general policy, which always contains these words, "Of the
" seas, men of war, fire, enemies, pirates,
" rovers, * thieves, jettisons, letters of mart,
" and countermart, arrests, restraints, and de-
" tainments of kings and princes, and all
" other persons, barratry of the master and
" mariners, and of all other perils, losses, and
" misfortunes, whatsoever they be, and how-
" ever they shall happen to come, to the hurt
" and detriment of the goods and merchan-
" dize, or any part or parcel thereof," whe-
ther if such goods be lawfully seized as prohi-
bited goods, the insurer ought to answer. It
is conceived they ought not; and the diffe-
rence hath been taken, where goods are law-
ful at the time of lading to be imported into
that country which they are consigned for:
but by matter, *ex post facto*, after the lading,
they become unlawful, and after arrival are
seized, there the assurers must answer, by vir-
tue of the clause, *and all other perils, &c.* But
if the goods were at the time of lading unlaw-
ful, and the lader knew of the same, such af-
surance will not oblige the assurers to answer
the loss; for the same is not such an assu-
rance as the law supports, but is a fraudulent
one.

Mal. Lex. Merc.
117.

The general and ordinary policy of an assu-
rance, containing all adventurers, sheweth,
that the assurer is to bear the adventurer of
thieves and robbers, and if it were otherwise
in particular, it must be declared.

Assurances made for pirates is to be under-
stood also for thieves, who by night steal the
goods from the ships. If goods are stolen or
embezzled on shipboard, the master is answer-
able, and not the insurer.

Where

Where a policy of insurance is against restraint of princes, that extends not where the insured navigate against the laws of countries, or where there shall be a seizure for not paying the custom, or the like. *Per Hutchins*, lord commissioner.

A policy was made from *Cadiz* to *Vera Cruz* in *New Spain*, upon monies lent upon bottomry, and upon any kind of goods and merchandize whatever, laden aboard the good ship called the *Nostra Signora Carmen* and *Mary Magdalen*, the adventure beginning immediately from the lading, before a day to come, and the monies from the time they were to be lent, and so to continue from *Cadiz* to *Vera Cruz*, and after delivery; with proviso, to stay at any port or place in her voyage, and likewise to touch at *Porto Rico*, and there to lade and unlade, without any prejudice to the insurance, the cargo being valued at one thousand seven hundred pounds sterling, without account, &c. against seas, men of war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals at sea, arrests, restraints and detainments of all kings, princes, and people, of what nation, condition, or quality soever. The ship being laden at *Cadiz*, then touching at *Porto Rico*, the goods were there seized and arrested. In an action brought upon the policy, the defendant pleaded, that the ship, at her arrival at the port of *Rico*, was laden with prohibited goods and merchandize, which, together with the ship, became forfeited by default of the proprietors, and were there seized and taken. The question was, if the owners should insure, and then order prohibited goods to be laden, whether, if these goods are seized, they should recover against the insurers. The second objection

Mol. B. 2. c. 7. sect. 15. In these sort of contracts fair dealing must be critically observed, inasmuch as the nature of the obligation requires it on both sides. Locinius, B. 2. c. 5. sect. 8.

jection was, if, (as the defendant had pleaded this plea) the same were good as to the first. The court did all incline, that the insurance ought to be *bona fide*, i. e. the restraint ought to be of such goods as by the law were not restrainable; but surely that cannot be, for the intention of policies are to warrant the perils of all manner of goods in all manner of cases. So that if there be a loading *bona fide*, be it prohibited or not, the same in case of loss ought to be answered, unless it were a fraudulent contrivance. But to the second, it was resolved, that the plea was insufficient; for, admitting the same should not oblige the insurer, yet because the defendant did not shew that the goods were laden either by the insured, or by the factor, or order, (for otherwise the same should not conclude them; because perhaps the master, or his mariners, or a stranger might load them on board without order) so that upon the mere insufficiency of the manner of pleading, and not of the matter, the court gave judgment for the plaintiff.

Mol. B. 2. c. 7.
sect. 15.
• 12 Car. II. c.
32. 14 Car. II.
c. 7, 18.
† 12 Car. II. c.
18.

If a merchant will freight out wool, leather,* and the like, or send out goods in a foreign bottom, † and then insures, and afterwards the ship happens to be taken, by reason of which the ship and lading are forfeited, the insurers shall not answer the damages; for the very foundation was illegal and fraudulent, and the law supports only those assurances that are made *bona fide*; for if it were otherwise, and men could insure against such actions, it would destroy trade, which is directly to thwart the institution and true intention of all policies of assurance.

Lex Mercat. 280.

This action was brought by the plaintiff against the defendant, on a policy of insurance

ance which the latter underwrote so long ago as in *November, 1743*, on the ship *George and Henry*, Captain *Bowlar*, at and from *Jamaica* to *London*, interest or no interest, free of average, and without benefit of salvage to the insurers, with a warranty annexed to the policy; viz.

“ Warranted the said ship to sail from *Jamaica* with the fleet that came out under
“ convoy of the *Ludlow-castle* man of war.”

The said ship did sail accordingly with the fleet under the aforesaid convoy; but in a great storm that happened some time after their sailing, wherein many ships were lost, the *George and Henry* received so much damage as obliged her to bear away for *Charles town* in *South Carolina*, where she put in, and upon examination was found quite unfit to put to sea again; whereupon her cargo was taken out and loaded aboard other ships for *London*, and she condemned and broke up.

In consequence of which, the plaintiff demanded his insurance: and all the underwriters being satisfied of the truth of the fore-mentioned fact, paid their loss, except the defendant, who went so far as to settle it, and, according to custom, underwrote the policy in the following words and figures:

“ Adjudged the loss on this policy, at ninety eight pounds *per cent.* which I do agree
“ to pay one month after date.
“ *London, 5th July, 1745.*

“ *Henry Gouldney.*”

Insurances.

When this note became due, he thought himself no way bound by it, but insisted on fuller proof, particularly of the ship's sailing under convoy, as warranted, and of her condemnation at *Carolina*; but it having been always the custom, that after such adjustments as above, with promise of payment at a certain day, are made between the insured and insurer, no further evidence is ever required, but the loss is constantly paid; and it was upon this account that a verdict was found for the plaintiff: and the chief justice, considering it as a note of hand, declared that the plaintiff had no occasion to enter into the proof of the loss.

Danbony v. Read.

Lex Mercat. 228.

The plaintiff made an insurance in *London* on the *Tryal* privateer, fitted out at *Bristol* for two calendar months, where ever the ship might then be on a cruize, or in any port or place whatsoever or wheresoever; the said ship to be valued at interest, or no interest, free of average and without benefit of salvage.

The said privateer being fitted for her cruize, sailed from *Bristol* on the twenty-ninth of *May*, 1746, and some days after she was met by a *French* privateer of a superior force, who attacked her, and, after a brave defence, took her.

She had been in the enemy's hands about eight hours, without their removing any of her men or stores, when Admiral *Martin*, with his whole fleet appearing, retook the *Tryal*, and hearing of the gallant behaviour both of the captain and his crew, they unanimously agreed to give up their salvage to them, and accordingly drew up and signed an instrument to that purpose: and the admiral ordered her to be furnished with all necessaries, and sent a man of war sloop to see her safe into

into *Bristol*, where she arrived the latter end of *June*, being between three and four weeks before the insurance expired.

These circumstances the plaintiff thinks entitles him to a total loss, as the voyage was over-set; and the policy being on interest or not, will admit of no average.

The defendant agrees to the last assertion, but for that very reason insists he has no loss to pay, as he is free from a partial one, and there can be no total one where the ship is arrived, and, as he insists, might have been fitted out again before the limited term of two months expired, had the owners not determined the contrary; and besides, though the ship was taken, yet, as she was never carried within the port of the enemy, or was so taken as to be beyond the possibility of a recapture, and hath returned to *Bristol*, so long before the two months expired, as was sufficient to refit her in, the defendant supposes that the neglect of the owner ought not to be imputed to the underwriters, more especially as several ship-builders attended to prove there was time enough, as several merchants did to give their opinion in regard to the loss. Verdict for the plaintiff. *Jenkins v. Mackenzie*.

Policies in general.

Lex Mercat. Re.
deviv. 267.

THE snow *Tryal*, *William Jefferys* master, was taken up by the government of *Carolina*, as a flag of truce, to get to the *Havanna*, with pretence to bring from thence some *Palatines* lately taken and caried in there on board an *English* ship, the *Lydia*, Captain *Abercromby*; and by this occasion several *Carolina* merchants loaded goods aboard her to a very considerable value, and directed their friends, Mr. *James Crockatt*, of *London*, to get ten thousand pounds insured on them; at the same time to inform the underwriters of every circumstance of the voyage; viz. that the cargo consisted of eighty or ninety negroes, and the rest manufactures of *Great Britain* and *Germany*; all which were to be regularly cleared out for *Providence*, where the vessel was to have liberty to call in her voyage down for a pilot. The assured also mentioned the probability that one master of the *Spanish* language might go in the character of the captain of the flag, by the aforesaid government, and *Jefferys* only appear as pilot, though the latter was to sign all bills of loading: and the same insurance was ordered from the *Havanna* to *Carolina*, as was made to the *Havanna*. Mr. *Crockatt* got the ten thousand pounds insured at four private offices, at and from *South-Carolina* to the *Havanna*, and at

at and from thence back to *South-Carolina*, with liberty to touch at *Providence*, outward and homeward bound, upon any kind of goods laden or to be laden aboard the ship called the *Tryal* (a flag of truce ship) *William Jefferys* master, beginning the adventure from, and immediately following the loading thereof aboard the said ship at *South Carolina*, and so to continue until the said ship, with the goods whatsoever, shall be arrived at the *Havanna*; and so shall farther continue till arrived back at *South Carolina*, and the same there safely landed; and it shall be lawful for the said ship in this voyage to stop and stay at any ports or places whatsoever, more especially at *Providence*.

At the foot of some of the policies are these words: *viz.*

“ Warranted a flag of truce for the voyage.”
And in others, after describing the voyage,
“ The ship being a flag of truce for the
“ voyage.”

The *Tryal* sailed from *South Carolina* to the island of *Providence*, after the captain had received his credentials from the governor, as commander of a flag of truce ship, where she arrived, and disposed of part of her cargo, and then sailed directly towards the *Havanna*; and being arrived near the entrance of the harbour, was seized by a *Spanish* ship of war and carried into the said place, where her loading was condemned and sold, and the ship, officers and sailors detained near five months; at the expiration of which time, the governor of the *Havanna* permitted them to return, with some *English* who had been made prisoners but without the *Palatines* they went to reclaim; and the governor gave the captain a protec-

Insurances.

tion to screen him in his return from being molested by men of war or privateers.

Mr. *Crokatt*, on receiving advice of the above-mentioned loss, demanded the money of the insurers, who, thinking they had reason to deny the payment, suffered themselves to be sued for it; and Mr. *Crokatt*, to support his demand, offered to produce the invoice, bill of lading, credential letters, and an affidavit under the seal of the province of *Carolina*, attesting that the goods contained in the invoice were shipped; and witnesses who were ready to prove, *viva voce*, the capture and sale of the goods at the *Havanna*, the detention of the mariners, and that the ship returned, as a flag of truce, with forty-nine *English* prisoners to *Carolina*.

On the other hand, the underwriters, to invalidate the insurance, pretended that this was an illicit trade, that the ship was not a flag of truce, or, if she was so, that the assured, by warranting her to be so, did in effect engage that the goods should be exempt from seizure; that, to intitle the plaintiffs to a recovery, it was incumbent on them to shew the condemnation, and the reasons of the confiscations at the *Havanna*; and many other arguments were used to set aside the policy; but the jury found a verdict for the plaintiffs. *Hill et al. v. Spencer.*

*Lex Mercat. Re-
deviv. 269.*

The *Westerwyck's Arms*, Captain *Richard Horner*, a *Swedish* ship and commander, was chartered at *Hamburg* by Mr. *Jacob Basonquet*, a merchant there, to sail for *London*, and there to take in such goods as he or his correspondent should put aboard her, and carry them to such parts of *Italy* as he should be directed.

A large quantity of goods were loaded aboard her to the value of thirty or forty thousand

thousand pounds ; and among the shippers the plaintiff was one, who took this opportunity of sending his friends woollens to the amount of one thousand, three hundred, and sixty-seven pounds, twelve shillings, and seven pence, consigned to one Mr. *Anthony Damiani*, a merchant at *Leghorn*, for the use of several persons in *Italy*, by whose orders they were shipped, though with the circumstance that the property was not to be vested in them, neither were they to pay for them, till the goods were arrived and delivered according to the bill of lading ; and consequently the plaintiff's property, till the aforementioned particulars were complied with, which induced him to get one thousand pounds insured on them ; and it was mentioned in the policy, that the goods were warranted to be inserted in the bills of loading, for *neutral account*. This was a custom during the war, in order to screen goods from the enemy's seizure ; and the captains of neutral ships would not sign bills of loading without this insertion ; which was Mr. *Boehm's* motive for filling up his accordingly.

This ship in her voyage was taken by a *Spanish* privateer [and carried into *Ceuta*, a *Spanish* port on the coast of *Barbary*, where the goods were condemned as a lawful prize, as appears by a copy and translation of the sentence of condemnation, though the ship was set at liberty, and the captain, after fruitlessly soliciting the release of his cargo at *Ceuta*, went to *Cadiz* to reclaim it ; where, notwithstanding he was joined in solicitations by the *Swedish* consul, and both asserted the honour of the flag, and the neutral property of the merchandize, they could prevail nothing towards altering of the sentence, which stood confirmed, though

Insurances.

though, whilst this was transacting, Mr. *Boehm* demanded his insurance of the underwriters, who being convinced of the justness thereof, came to the agreement of paying him fifty pounds *per cent.* and accordingly indorsed the policy in the following manner : *viz.*

“ We, whose names are hereunto subscribed, do agree to pay unto the assured, fifty pounds *per cent.* on our several subscriptions on this policy, in a month from the date hereof; but in case the goods are restored in safety, and are discharged, according to the tenor of the policy, and the said fifty pounds *per cent.* are to be repaid to us by the assured, we engaging to make good any average or damages that may ensue by the detention of the said goods.

Signed by all the underwriters.”

And afterwards there was likewise indorsed the following words : *viz.*

“ Whereas the within mentioned ship, *Westwycke's Arms*, Captain *Horner*, from *London* to *Leghorn*, was taken by the *Spaniards* in *July*, 1746, and forcibly carried into *Ceuta*, where she has been detained with her cargo ever since, and, notwithstanding all the application and endeavours that have been made use of by the assured and his agent for their release, they having hitherto proved fruitless and without success; therefore we, the underwriters on this policy, do agree to pay Mr. *Thomas Boehm*, the assured, the remaining forty-eight pounds *per cent.* in one month from the date hereof; which the said Mr. *Thomas Boehm* obliges himself to refund and pay back again, in case his said goods should be hereafter released,

released, and arrive safe at *Leghorn*, according to the tenor of this policy, we engaging ourselves to make good any average or damage that may ensue in this adventure; and the assured promises and obliges himself to continue his utmost endeavours that the said goods may be restored and discharged."

The present defendant only signed the first of these agreements, but never paid the money pursuant thereto, though all the rest of the underwriters signed both, and have paid their money long ago.

The plaintiff proved, that the defendant was acquainted, when he underwrote the policy, with the reasons for inserting the words, That the goods should be warranted to be inserted in the bills of loading for neutral account. He also proved his interest, and that the goods were his till delivered; that all the underwriters on this ship have paid their losses, to the aforementioned value of between thirty and forty thousand pounds; and that even the defendant himself had paid one on her. He also proved, by a person, *viva voce*, who had seen the ship at *Cadiz*, and heard the captain and *Swedish* consul discourse about the solicitations for freeing the goods, which, joined to the before-mentioned copy of her condemnation, he thought sufficient proof of the loss; but the defendant being of a contrary opinion, and not satisfied therewith, stood a trial, when the jury found a verdict for the plaintiff. *Boehm v. Snow*.

The *Dartmouth* galley, being fitted out as a privateer, sailed in company with the *Fortune*, in *October*, 1744, on a cruize, and the plaintiffs being concerned therein, got insurance made on their part for one calendar month

Lex Mercat.
Redeiviv. 270.

month, of which the defendant wrote two hundred pounds ; and the said ships, after being out two days, fell in with two *French* men of war, with whom the *Dartmouth* engaged, and after a gallant defence, was taken by them, though not till the captain and two more were killed, and several wounded ; when the lieutenant, seeing the inequality of the combat, ordered the colours to be struck, and surrendered ; on which the conquerors ordered the *Dartmouth* people to hoist out their barge, and go, as many as could, on board the man of war. But the *Dartmouth's* men, finding an opportunity, sailed away and got off. Their enemies pursuing and overtaking them, they were obliged finally to submit ; and the men of war sent a lieutenant with a sufficient power to take possession of the *Dartmouth*, in whose custody they continued only about an hour and an half, or two hours ; for the lieutenant and his company perceiving she was leaky, by one of the men of war running foul of her and starting a plank during the engagement, called his commanders to send a boat for them, as they feared sinking ; which they immediately complied with ; and the lieutenant of the *Dartmouth*, and about ninety of her men, were carried into *France* ; and the boatswain being left on board, with about twenty men more, including the nine wounded, searched for, and in a great measure stopt, her leaks ; and taking advantage of the *French* men's fears and the night, in two days after got safe into *Dartmouth* ; and, soon after her arrival there, was refitted by the owners, and sailed on another cruize.

After this, the said ship was kept insured from month to month, and the defendant underwrote several subsequent policies on her, being

being always told by the office-keeper that he was off the first policy ; and neither he nor the plaintiffs ever pretended to demand any thing of him on account thereof.

In about six months after the expiration of the aforesaid policy, the defendant paid the plaintiff a loss on her, having continued to insure her monthly from the policy in question ; and the plaintiffs, when they received it, never so much as insinuated, or pretended, they had any right to the first insurance. However, the plaintiffs have now claimed it, as the taking of the ship, and carrying her men away, entirely overset the cruize, and she could not be benefited and sail on another before the expiration of the month for which she was insured ; and consequently this proved an entire loss to the assured. But, in support of the contrary, it is alledged by the defendant, and confirmed by the opinion of several very considerable merchants, that this could not be counted a total loss, more especially as it is not on a cruize ; the words of the policy being, to be insured, lost or not lost, to any ports or places, for one calendar month ; but no mention made of any cruize : on which account the defendant supposes there could be no interruption to a thing never guarded against : and besides, the ship was so far from being a total loss to the owners on the first risk, that she afterwards met with very great success by taking a very rich prize.

And if this doctrine offered by the plaintiffs had taken place with respect to insurances made for a time; every collier might bring this as a plea, as they are always insured on these terms, though it was never apprehended that every little accident which happened within
the

the time, and obliged them to refit was deemed a total loss.

The plaintiffs were nonsuited, because unprepared to shew the impossibility of her being fitted out again before the expiration of the insurance. *Jalabert and Nevil against Collier.*

Lex Mercat. Re-
deviv. 271.

The plaintiff caused insurance to be made for himself and others, lost or not lost, in the good ship *L' Hereux*, Captain *Beatrix*, from *Bayonne* to *Martinico* and *Cape Francois* in *St. Domingo*, with liberty to touch and stay at any ports or places whatsoever, without prejudice to the insurers, and without other proof of interest in case of loss than the present policy; and the *French* and *American* livres to be valued at eleven pence each, without farther account to be given: and for this the assured paid thirty guineas *per cent.* to have twelve guineas *per cent.* returned, in case the ship should depart with convoy from *Bayonne* or *L' Isle d' Aix*.

The ship sailed two days after in prosecution of the aforesaid voyage, and was taken, brought to *London*, and condemned; of which the assured demanded of the defendant his subscription, which he refused to pay for different reasons, as herein after mentioned.

Several merchants in *France*, particularly at *Bordeaux* and *Bayonne*, after the commencement of the late *French* war, fitted out a great number of ships, under pretence and appearance of sending them to the *French* settlements in *America*; and got them insured to their full value at *Marseilles*, and other places in that country: and as the laws of *France* prohibit every person from making larger insurance than what their interest is, they

they, without considering what they had done in their own country, requested several gentlemen here to get insurances made for them, often to three or four times more than their real interest was; and the said ship being generally taken or lost, the underwriters, without suspecting any fraud, paid their subscriptions; by which means the *French* concerned in these practices, get more than they could have done by any fair adventures.

These sort of transactions became at last so notorious in *France*, that Mons. the Count *de Maurepas*, director of the marine in that country, about *May*, 1747, took notice of it, and sent a letter to a merchant at *Nantes*, desiring him to enquire of his correspondent in *England* into the the valuations of the several ships and cargoes mentioned in the letter (and amongst them of the *Hereux*, Captain *Beatrix* before mentioned) with the amount of the insurances made thereon; declaring, in the said letter, that there were great frauds committed by persons of *Bayonne* and *Bordeaux*, in fitting out ships and making large insurances thereon, then putting these ships in the way of being taken by the *English*. This gentleman sent a copy of the above-mentioned letter to Mr. *Henry Loubier*, a merchant of this city, who generously communicated the same to several of the principal underwriters; and they, in consequence of this advice, chose a few gentlemen from among themselves, as a committee to enquire into these frauds: and they found that several gentlemen in *England* had procured insurances to be made on *French* ships from *Bordeaux* and *Bayonne* to the *West Indies*, either upon the terms of interest or no interest, or without further proof of interest than the policy, to the amount of one hundred thousand

Insurances.

thousand pounds, of which near the half was disputable losses, by there being great reason to believe that these insurances were fraudulent, and, among others, the ship in question; upon which a bill in Chancery was filed, and an injunction obtained; but on the plaintiff's swearing he knew of no fraud, the injunction was dissolved.

The committee sent an answer to Mr. *Maurepas's* letter, authenticated by a notary public; whereby it appeared that the ship and cargo in dispute were sold in *England* for seven hundred and eighty-eight pounds, eleven shillings, and three pence; viz. the cargo for 388*l.* 11*s.* 3*d.* and the ship for 400*l.* and there was insured on her in *England* two thousand, seven hundred, and ninety pounds; and at *Marseilles* it was found upon enquiry, that twelve thousand livres had been insured; which, reckoning a livre at eleven pence, amounts to five hundred and fifty pounds.

The preceding circumstances were offered to the court, in order to discharge the defendant from paying the insurance; but it not being in his power to prove them, though he supposed them matters of fact; and it appearing plainly that the plaintiff had not in the least been guilty of any fraud; and the policy being expressly valued, and that, in case of loss, the assured should not be obliged to prove his interest by any other means whatsoever, save by the present policy (as is mentioned at the beginning of this case) and had paid a premium adequate to the risk, which, to the underwriters, was rather less than would have been on an interest to be proved; as, in this latter case, they are liable to averages; whereas, on policies, like this in question, of interest or no interest, they are solely answerable
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for a total loss: and the jury found a verdict for the plaintiff.

The same was tried on three other ships under the same circumstances (on which large sums had been insured) and had the same determinations. *Da Costa v. Panchon.*

The plaintiff being concerned in the *Salamander* privateer, made insurance on her, as well in his own name as for and in the name and names of all and every other person or persons, to whom the same did, might, or should appertain, in part or in all, lost or not lost, at and from the *Downs*, or elsewhere, to any ports or places whatsoever, for and during the space of three calendar months, to commence from the twenty-first of *December*, 1744, upon the body, tackle, &c. of the said ship; and to continue until the said ship, with her tackle, &c. should be arrived at, as above-mentioned, and there had moored at anchor twenty-four hours in good safety; and it should be lawful for the said ship in that voyage to proceed and sail to, and touch, and stay at, any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. for so much as concerned the assured, was and should be valued at interest or no interest, free of average, and without benefit of salvage to the insurers, touching the adventure, &c. which they the assurers were contented to bear, and did take upon them in that voyage, &c. And, in case the said ship should not be heard of in twelve months after the expiration of the above-mentioned three months, the assurers agreed to pay the loss, and the assured to repay the same, if afterwards the said ship should be heard of in safety.

Lex. Mercat.
Redeviv. 272.

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The defendants underwrote two different hundred pounds, at separate times, on the aforesaid policy, and the ship proceeded on her voyage on the twenty-fourth of *December*, as above-mentioned, and was taken by the *French* on the second of *February* following, after an engagement of more than an hour with a much superior force, and after several of her men were killed and wounded; and being thus conquered, 117 of her men (including the captain and all the officers) most of her small arms, and the commissions, were removed into the enemy's ship, and carried into *France*, leaving only seventeen *English* on board the *Salamander* (of which five soon after died of their wounds) and two *French* officers, with twenty-four of their men; and the said ship was in possession of these their adversaries from four of the clock in the afternoon of the said second day of *February*, until five of the clock in the afternoon of the fifth day of the same month; during all which time she was absolutely in the power of the enemy, and was, at the last mentioned period, retaken by the *Hunter* privateer, Captain *Richard Veale*, who put thirty of his men and two officers on board her, and kept her cruising with him for eight days, when the said Captain *Veale* engaged and took a *French* privateer, with which, together with his own ship and the *Salamander*, he endeavoured to gain some port in *England* or *Ireland*; but the wind and weather not permitting, he carried them all to *Lisbon*, a neutral port, where he lay a considerable time; during which Captain *Veale* took out of the *Salamander* two carriage guns and thirty thousand, one hundred pounds weight of

of bread for his ship's use : and the captain of the *Dursley* privateer, being in partnership with the *Hunter*, also took out two carriage guns for the use of his ship : of all which, Captain *Veale* made a *manifesto*, and sent it to his owners, that they might be accountable for them where they ought.

Captain *Veale* instituted a suit in the vice-admiralty court at *Gibraltar* against the said ship the *Salamander*, &c. and on the twenty-ninth of *April*, 1745, obtained a decree from the judge thereof, that the said ship, &c. should be restored to her rightful owners, they paying, in lieu of salvage, one third part of the full, true, and real value thereof, free and clear from all charges and deductions whatsoever; but as her capture had entirely overset her voyage before the expiration of the three months, for which she was insured, the plaintiff demanded the insurance of the defendant; which being denied, he sued him for the same; and on the trial at Guild-hall, the jury brought in their verdict special; which occasioned it's being argued before the judges at the King's Bench in Hil. term, 1746; and the dispute in question seemed to turn on this point: *viz.* Whether a policy made free of average can affect the insurer but by a total loss? This was strongly argued in favour of the defendant, whose council supposed that the recapture prevented the total loss, which would have happened, had the enemy carried her into *France*; and that he was freed by the policy from payment of the average ordered to be paid in lieu of salvage; so that consequently the plaintiff's demand on him was ill founded and unjust: but the arguments on the contrary side being strong and conclusive, I shall transcribe the

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Insurances.

greatest part of them; and the questions now upon this special verdict are two: one to be considered upon the first, the other on the second count in the declaration.

First, Whether the property of the prize was divested by the taking? And,

Second, Whether, as it was found that the voyage was totally broke, and the purpose thereof defeated by the capture, and no restitution made to the owners, there is not a breach of the policy sufficient to give the plaintiff a right of action; notwithstanding the recapture; and though the property be not changed, and the insurance be made free of average?

First, It is found that the ship was taken by enemies as a prize, and that one hundred and seventeen men, including the captain and officers, with the greatest part of the small arms, commission, &c. were carried into *France*, and only seventeen men were left on board; all of which, except three, were wounded, and five of them died soon after; so that they were not able to navigate the ship: but two *French* officers and twenty-four men were put on board; and the said ship, so conquered, remained in the possession of the enemy from the second to the fifth of *February*; and, during all that time, was absolutely in their power; and that thereby the voyage insured was totally prevented.

These facts, according to the laws of *France*, *Spain*, *Holland*, *Sweden*, and other *European* nations, are sufficient to divest the property of the prize: but, according to the opinion of some writers, who draw their notions from the rule of the civil law, the property of a ship taken at sea is not divested till the prize
is

is brought *within the territories, or within the port of the captors;*

If the question therefore is to be determined by the present law of nations, it is with the plaintiff; for thereby the property of a prize is changed by a firm possession of twenty-four hours. But if by the opinion of certain doctors of the civil law, it is against the plaintiff, the prize not being brought *within the territories of the enemies.*

It seems to be agreed, by all the contending writers upon this question, that the legal principle which vests the property of a prize, is such a taking as enables the captor to retain and defend the possession: but their dispute is concerning what circumstance is declarative of such ability; and upon this head it is thought a variety of difficulties have arose.

Van Bynkershock, speaking to this, says, *But when so much is recovered, we seem able either to keep or not the possession thereof, the variety of causes not permitting us to determine.*

They all agreed, that when the *probability of recovering* is lost, or the parties may be said *to have given up all intention to recover*, the property becomes the captor's.

But they cannot settle what shall be evidence thereof, though they confess it would be beneficial to the public, and reasonable in itself, to put an end to an infinity of litigation, by reducing the question to a certainty: yet, notwithstanding so necessary an end is fully agreed upon, the means leading to it are not. The doctors, adhering zealously to the rules of the civil law, contend, that the *criterion* for determining the question shall be a bringing the prize *within port*; the law of nations regarding rather the general interest and con-

Insurances.

venience of the subjects, and to give all possible encouragement in the time of war for the retaining of prizes from the enemy, hath ordained that a possession of twenty-four hours shall be sufficient.

And now it is for the judgment of the court, to which side they will pay the deference: that is, Whether to the opinions of such doctors as *Albericus Gentilis*, *Petrinus Bellus*, and *Van Bynkershoek*, or to the laws and constant practice used in other nations.

If they adhere to the doctors, the question is not finally settled amongst them; for some contend, that there must be a bringing *within the captor's country*; others, only *within a fleet of ships*; and some *into a neutral port*, &c. and some go so far as to say, that after a bringing within port, there must be a sailing to a new destination.

But by the law of nations of modern or later institution, the certainty sought for is definitive: viz. a possession of twenty-four hours, and the authorities to prove the law of nations on this question, are,

Grotius, B. 3.
chap. 6. sect. 4.

1. *It seems, that by the later law of nations introduced among the European people, those shall be esteemed prize which have been in the enemy's power twenty-four hours.*

Barb. Notes on
Grotius. B. 3.
chap. 6.

2. *The custom is taken from the antient laws of Germany, and it has established twenty-four hours, and with reason.*

Ibid.

3. *The same thing is practised in England and Castille.*

Locinius, on the
law marine. B.
2. ch. 4. sect. 14.
Zouch on the
law of heralds at
arms. Part 2.
8, 21.

4. *But now ships taken by common reprisal among Christians and European people, whether by law or custom, are not received, unless the enemy loses them on the same day by a sea fight, and they*

they have also been twenty-four hours in the captor's power; for then they are esteemed real captures, and their own right.

5. But whatever disputes the famous expositors may have, touching prize being brought into port before it becomes the property of the possessor, yet it is at this day held otherwise by the custom and laws of the Europeans, viz. that the prize should become the captor's, especially the enemy's ships, concerning which this treatise is, if they have been in the captor's possession a day and a night.

Locinius, B. 2.
ch. 4. sect. 2.

6. If any of our subjects ships be retaken from our enemies, after she has been in their hands twenty-four hours, the taking her shall be good; and if she be made prize within twenty-four hours, she shall be restored to the owner.

Ordinances
touching the ma-
rine. Tit. Prizes.
Act 8,

7. Simon Greenewegen, an author frequently quoted by the best writers, and "who was a celebrated lawyer in the last century, and of a family who had for a long course of years sat at the helm of government, proves, that the law requiring a ship to be brought into port, is abrogated, and puts it down as such in his treatise of *abrogated and disused laws in Holland and the neighbouring countries*, where he distinguishes what shall be said to prizes by the civil law, and what by the law of nations; to which end, in B. 49. tit. 15. of captures, &c. he makes several divisions and subdivisions of the subject, and has two subdivisions of ships, viz. *What shall be deemed prizes by the civil law of nations*; and under this head of nations quotes the passage aforesaid from Grotius, and adds, that now in Holland a prize may be good, no regard being paid to the time when the ship was in the enemy's power, so that she was never brought into port.

Sim. Green. on
abrogated laws,
&c. p. 353.

Insurances.

As by the law of other nations a possession of twenty-four hours undoubtedly divests the property of a prize, one might conclude, that as this question has not been judicially determined by this court, it would be reasonable to put the subjects of *England* upon the same footing with those of *France, Spain, Holland, Sweden, &c.* especially in mercantile contracts, which ought to have the same construction in one trading country as another; and more especially as this kind of insurance, interest or not, is a branch of trade peculiar to us: But if this will not do, the question upon the second count is to be considered, which is,

Whether upon this count there hath not been a breach of the policy or contract of insurances, sufficient to give the plaintiff a right of action upon interest or not.

It is found, that the prize was fitted out to cruize against the king's enemies; that all her men, except seventeen, as aforesaid, were taken and carried into *France*, and those left not able to navigate the ship; that the voyage described in the policy was thereby totally prevented; and that at the time of the verdict the ship remained at *Lisbon*, not restored to the owners.

This seems to be a breach, taking the policy either upon the foot of a contract or wager.

Considering it as a contract, the agreement is, that the ship shall not be prevented in her voyage by any of the perils or risks in the policy, amongst which are all surprisals at sea, arrests, restraints, and detainments of all kings, princes, and people whatsoever; and here has been a surprisal at sea, and a detention, whereby the whole voyage insured was totally broke, as found by the verdict; and this is a much stronger case than *Depaba* and
Ludlow,

Ludlow, where the court for very good reasons determined unanimously for the plaintiff, as appears by the judgment of Lord Chief Justice *King*, delivered as the opinion of the whole court; whereby it also appears, that a total loss is not necessary in all cases to give the plaintiff a right of action upon a policy, interest or not.

The defendant's counsel insisted in his argument, that as the policy was made free of average, nothing could affect the insurer but a total loss: because all other losses are included within the import of average by the words of the contract.

This is a mistake, and appears to be so from the words of the policy which immediately follow, *viz.* and without benefit of salvage to the insurer. If nothing but a loss of the whole could affect the insurer, it is not consistent that he should renounce the benefit of salvage; for what could he have to do with salvage, in case he was chargeable if any thing was saved.

This therefore is a construction not warrantable, being absolutely inconsistent with the express words of the policy, which are free of average, and without benefit of salvage to the insurer.

And as such a construction is inconsistent, another is to be sought, which is not so repugnant, and which may permit the words before mentioned to stand with more propriety; and this may be done by confining the import of average to a limitation: and the definition of average in the first article of the ordinance of *Fontainbleau concerning the marine*, title, "*Averages*," establishes such a limitation of the import of this word, as will give it a consistent place, as it stands in a policy of insurance,

insurance. It is, by the said ordinance, defined thus :

Ordinances of
1681. Tit. 7, of
averages.

All extraordinary expence laid out in ships and merchandizes, jointly or separately, and all damage which shall happen to them from their loading and departure to their return and unloading, shall be esteemed averages.

And it is certain the true import of the word Average, is, such damages as happen to the ship or cargo during the voyage, as the loss of anchors, masts, cables, &c. but that which breaks up the voyage, as in this case, a capture by enemies, whereby the whole end, purpose, and design of the cruize was absolutely defeated, by the actual taking of all the men, arms, provision, commission, officers, &c. cannot, from the obvious nature, circumstances, and reason of the thing, and the authority of the case of *Depaba* and *Ludlow*, be esteemed barely as an average to which the insurer is not liable, but must be considered as a total breach of the contract of insurance to which he is liable.

If the construction contended for by the defendant was to prevail, the insurer would rather be indemnified from; than subjected to the perils insured against; for if a taking happens at the beginning of a voyage insured from one port to another, or for a time only, and the voyage be thereby broken up, or the time elapsed, the recovery of the ship will ruin the insured, and be a general release to the insurer, who will also be thereby indemnified from all the risks in the policy; whereby, if no such capture had happened, the ship might have been lost, and a capture and detention; breaking up the voyage insured,
might

might put the insurer in a better condition than if there had been no capture at all, which cannot be the meaning of the parties, being inconsistent with the apparent design of an insurance.

Besides, in this case, the ship insured is not to this hour, as appears by the verdict, restored to the owners; neither is it worth their while to pay salvage and charges, and raise men to bring her home; and suppose they had, and she had been taken again by the enemy, the time of insurance was expired, and the insurer, in such case, would have said he was not liable. Therefore the loss in question must be considered as a total breach of the policy, and not as a bare average.

First, Here was a taking and a detention.

Secondly, All the men, commission, &c. taken and carried into *France*, and never retaken.

Thirdly, Though the ship was retaken, yet she was never restored; and possibly never may.

Fourthly, If restored, her men, arms, provisions, &c. being taken, could not pursue the purpose of the voyage, and therefore the insured may abandon the benefit of salvage.

Fifthly, The verdict has found the voyage was thereby totally defeated; and that is sufficient.

There are many cases where the plaintiff, on a policy, interest or no interest, has recovered, though no total loss of the ship, but because, by the perils in the policy, she was rendered unable to perform the voyage; as in the case of the *Ludlow-Castle*, and the case of the *Providence* between *Carter* and *Barrel*, where the ship came into *St. Ives*, bound for *London*, but being leaky, the cargo was

was unloaded, and the ship sold at *St. Ives*, though it was proved she might, at a considerable expence, have been made fit to perform the voyage; yet, as without it the voyage could not be performed, the plaintiff recovered, though no loss at all of the ship.

So in the present case, if the ship had been retaken in an hour, she could not have pursued the voyage; for all the men, &c. were taken and carried into *France*; and therefore she could not navigate herself, neither could she have performed the voyage insured.

But taking it upon the footing of a wager, as put by the defendant's council, What is the wager? It is, that such a ship, for, and notwithstanding any arrests, restraints, &c. will sail from *London* to *Jamaica*, or sail for three calendar months upon a cruize, as the adventure may be. If therefore by any arrest, taking, detention, &c. the ship is totally prevented from proceeding in the voyage, is not the wager lost? Has not a contingency insured against, happened?

Upon this case, for the reasons aforesaid, and many others arising from the nature of the contract of assurance, and particularly upon the authority and reason in *Depaba* and *Ludlow*, the plaintiff hoped for the judgment of the court in his favour; which was accordingly given; and the judges were unanimous in their opinion. *Pond and King.*

*Lex Mercat. Re-
deviv. 278.*

The plaintiff having underwrote the *William and Anne*, Captain *Strachan*, at and from *Virginia* or *Maryland* to *London*, had a mind to re-insure himself, and accordingly ordered Mr. *Alexander Hoskins*, a broker, to get it done; who having complied with the commission, certified on the policy that the interest was in the plaintiff.

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The insurance was made, interest or no interest, free of average and without benefit of salvage; but under the policy was this clause,

“ In case of retain, the assurers to have benefit of salvage, and to have average, the same as if wrote on interest.”

The ship sailed from *Virginia*, on her voyage to *London*; and, being about two hundred and fifteen leagues to the westward of *Cape Clear*, after a voyage of three weeks, she was taken by two *French* privateers, and carried into a place in *Newfoundland* called by that nation *Cape de Grate*, and commonly occupied by them in the fishing season; where she continued in the enemy's possession and power forty-nine days; during which time the enemy took out of her a great part of her cargo, and, after so rifling her, and, in their way, condemning her, the captain agreed to ransom her with what remained of her loading; and the ransom bill being signed, and his mate left as an hostage, they permitted him to pursue his voyage to *London*, where he afterwards arrived.

Soon after the ships arrival, the merchants who were concerned in the cargo, and had been insured, applied to their underwriters for satisfaction; when most of them settled the average for what was pillaged at 50 pounds *per cent.* one at 40: and the present plaintiff paid his quota therein; and afterwards applied to the defendant, who had re-insured him, to settle his policy: and it was agreed between them, that it should be on the same footing as the major part of the aforesaid underwriters on interest had done; which the broker in this insurance, understanding was done

Insurances.

done at fifty pounds *per cent.* he indorsed on the back of the policy these words :

“ Adjusted this loss at fifty pounds *per cent.*
 “ to pay in one month.
 “ London, 12 Dec. 1745.”

And signed by the defendant,

“ Daniel Flexney.”

Nevertheless, at the time the defendant signed the above mentioned note, he told the plaintiff that some of the underwriters on the original policies had paid an average only of forty pounds *per cent.* and therefore he would pay no more ; and at the same time with his pen drew a line through the word *fifty*, and above it wrote *forty*; which occasioned some dispute between them : but the indorsement so signed by the defendant remained uncanceled.

The defendant afterwards refused making any satisfaction under a supposition of his having no obligation thereto : for which his principal reasons were, *viz.*

First, That although he had signed such an adjustment at forty pounds *per cent.* yet he is not bound by it, because the plaintiff objected to it at the time of signing, and insisted on *fifty*.

Secondly, That, although the ship was in the enemy's possession, and carried into *Cape de Grate*, yet, as she afterwards proceeded on the same voyage, and arrived safe in *London*, therefore there could be no loss, so as to recover under a policy, interest or no interest.

To the first of which objections, the plaintiff admits that he did find fault with the defendant for striking out the word *fifty*, and inserting

serting the word *forty*; yet, as the defendant did not then think proper to cancel the said adjustment, but permitted it to remain on the back of the policy, the plaintiff apprehended he had a right to recover under the said adjustment.

As to the defendant's second objection, the plaintiff supposes, that, as the ship was carried in by the enemy to *Cape de Grate*, and detained till ransomed, that this will amount to a total divestiture or alteration of the property, and be deemed such a loss as will entitle him to recover. This case seems to be of a quite different nature from a recapture before the ship is carried into an enemy's port. Verdict for the plaintiff. *Hewvit v. Flexney.*

The plaintiff having caused himself to be insured fifty pounds interest or no interest, free of average, and without benefit of salvage, on the *Prosperous Esther*, Captain *Miln*, from and immediately following her last arrival at *Maryland* or *Virginia*, and to continue till her arrival at *London*; and not caring to appear in it, he directed his broker, *William Heart*, to get the policy made in his name; which was accordingly done; and, as she was deemed a missing ship, the premium was after the rate of sixty guineas *per cent.*

Lex Mercat. Re-
deviv. 279.

The ship failed on her voyage from *Virginia*, and in forty days after was taken by a *French* privateer about one hundred leagues to the westward of the *Land's End*, and was detained by the enemy six days at sea; and then both ship and cargo ransomed for three thousand five hundred pounds: but Captain *Miln*, instead of coming directly to *London*, whereto he was bound, on pretence of bad weather, put into *Jefracomb* in *Devonshire*, from whence

Insurances.

whence he wrote to his owner, Mr. *Dick*, of *London*: but the said gentleman's affairs being then unhappily situated, and having, prior to his misfortunes, assigned the ship and two policies thereon to Mr. *Alexander Black*, who apprehending, by what Captain *Miln* wrote, that the ship and cargo were much damaged since the capture, and therefore that the value might fall short of a sufficiency to pay the ransom bill, and incident charges. He rather chose to come upon the insurers for his money, than to have the trouble of taking the ship and cargo under his care, and therefore abandoned the whole to Captain *Miln*, to enable him to pay the ransom bill.

And thereupon Messieurs *Simonds* of *London*, merchants, agents for the captors, ordered Captain *Miln* to carry the ship and cargo to *Bristol*, there to be disposed of, instead of bringing her to *London*: which was accordingly done; and, after paying the captain and sailors their wages, amounting to upwards of three hundred pounds, the neat proceeds fell short of the ransom bill; owing to the damage she received in her voyage after the capture.

The defendant supposes this was a gaming policy, though the plaintiff insists upon its being a reinsurance; and having applied to the defendant, after underwriting, for his consent to have it declared so, he absolutely refused to admit it.

The plaintiff seemed to lay a good deal of stress on a supposed indiscretion in the captain, by paying more for the ship and cargo than they were worth; but had they escaped the damages subsequent to the ransom, they would undoubtedly have sold for more than
they

they cost freeing, and never have been abandoned by the owners.

The plaintiff likewise insists, that the ship sailed from *Virginia*, but never arrived at *London*, according to the terms of the policy; and therefore the insurance was due. But the defendant pretends, that the ship's putting into *Ilfracomb* was a deviation, and consequently not within the risk of the policy: and besides, he thinks this is not to be considered as a total loss, in the case of interest and no interest, as it is a mere wager, whether the ship arrives or not. The ship did arrive in *England*, and is now in being; and this was a ransom at sea, only for the benefit of the concerned; but the defendant could reap no advantage by it, whether it was prudently done or not; and it might occasionally have been more for his interest if the ship had continued at sea in the enemy's possession, as there was a chance of her being retaken before she had been carried *within port*; and if she had, and arrived safe, there would have been no loss within the terms of the policy; as he presumes there is no room to claim a loss in cases of a recapture. Several merchants, insurers, and brokers, being of opinion, that on a policy, interest or no interest, a capture at sea is never considered as a total loss, unless the prize is afterwards carried into the enemy's port, and that the abandoning the ship and cargo by the owners, after her arrival, will not alter the case. The jury found a verdict for the plaintiff. *Barclay v. Etherington*.

The *Broomfield* was insured at and from the *Leeward Islands* to *Bristol*, interest or no interest, free of average loss, and without benefit of salvage; and, among other underwriters, the defendant subscribed. The ship in her

Lex Mercat. Re-
deviv. 280.

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passage

passage home was taken by a *Spaniard*, who took out four men and the captain, and put nine of his men on board, and ordered them to carry her to *Bilboa*; for which place her course was directed: and on her voyage there, and after having been in possession of the enemy thirty-nine hours, she was retaken by the *Terrible* privateer belonging to *Liverpool*, and carried into *Waterford*, from whence some proposals were made to the owners of the *Terrible*, in order to her release, and permission to prosecute her intended voyage to *Bristol*; but not being agreed to, she was brought to *Liverpool*, and after a commission of appraisement had issued out of the Admiralty, she and her cargo was sold to pay the salvage due to the recaptors, as by act of parliament.

One of her *quondam* owners now bought the whole, and afterwards parcelled her out among several gentlemen at *Bristol*, who became copartners with him; to which place she was ordered, and where she arrived; though, as the plaintiff supposes, this could not be an arrival, agreeable to, or within the intent and meaning of the policy in question, under the circumstances above stated: *viz.* of her capture, recapture, appraisement, and sale; and with an entire new set of owners, he thinks he is intitled to a total loss.

The defendant, on the contrary, urges, that this was no more than a bare capture and recapture, which he says has never been deemed a total loss. In reply to which, the plaintiff affirms, that this was still more; for the ship, after being re-taken, was carried into *Waterford* by the privateer, kept some considerable time there, afterwards was carried into *Liverpool*; and there (as above mentioned) with

with the cargo appraised and sold to pay the salvage, and a new set of owners engaged before she set out for *Bristol*; by which the whole voyage was altered and lost.

And to justify this plea, he quoted my Lord chief justice *Lee's* sentiments, when he gave judgment in the case of the *Salamander*: viz.

“ We must not judge this cause by the rules of the civil-law, but we must judge it by the rules of the common-law, and determine on this policy an agreement and contract between the parties, whose intention and meaning, when they enter into it, must govern; and altho' in the civil-law, to make a forfeiture of an insurance, there must be a total loss of property, that is not a reason why it should be required in this case, because here the policy, by the words of it extends to accident, where there may be no loss of property, as taking by pirates, enemies, men of war, &c. And this, his lordship declared, was taken notice of by Lord *King* in the case of *Depaba* and *Ludlow*, where there was no alteration of the property by that capture, as *Sweden* was not at war with *England*; and yet that was deemed a total loss: but in the present case, here was a capture by an enemy. And his lordship farther said, that the question on the *Salamander* was not, Whether the property of the privateer was lost by this capture, but, Whether the capture was such a peril, as is insured against? The judges were unanimously of that opinion; and judgment was given for the plaintiff. Verdict for the defendant. *Daubony v. Read.*

The *Tyger*, Captain *Harrison*, being bound from *London* to *Gibraltar*, the plaintiff got an insurance

Lex Mercat. Re-
deviv. 281.

Insurances.

insurance made on her, interest or no interest, free of average, and without benefit of salvage to the insurers; and at the foot of the policy there was a warranty, that the ship should depart with convoy from some port in the Channel.

The said ship proceeded on her voyage as far as the Downs, and sailed from thence under convoy, as warranted; but soon after her departure, she received a very considerable damage, which obliged her to return to *Dover* pier to refit: and after the necessary affairs were finished, she sailed again in prosecution of her voyage; and, for her security therein, to join the convoy at *Spithead*; but having got as far as the *Isle of White*, she proved so leaky, as obliged her to a second return; and she once more arrived at *Dover* to search for her leaks.

Her owners, on this, thought it adviseable to have her surveyed by men of skill and judgment; and thereupon two ship carpenters and two masters of ships, having examined her, declared that they had surveyed both sides from stem to stern above the wales, and the transom, after the planks were ripped off, and found the timbers to be very rotten, and in so bad a condition, that, except all her upper works were pulled down and new built, they did not judge her in a fit condition to proceed on her intended voyage; and that, if she was so repaired, the charges would come to more than she would be worth, with all belonging to her.

The plaintiff insists, that she was a very good ship when she set out on her voyage, and she was only rendered otherwise by the bad weather she had met with, which at last not only rendered her unfit for her voyage, but occasioned

sioned her proving a total loss to her owners; that she would have weathered the storm in all probability unhurt, had not the *Swift* privateer drove foul of her; that when her first hurt was repaired, the builder supposed her stronger than before the storm; though, when she was laid open; her transom, as before mentioned, and most of her long timbers, were found rotten; so that, notwithstanding it is possible she might have performed her voyage, yet, had her defects been known, no body would have cared to venture in her.

Mr. *Burton*, who fitted her out in the *Thames*, declares she was in very good condition, and fit for any voyage; though he did not examine her timbers, but only caulked her and mended her outside and floor-timbers: but it is natural to suppose, that if her timbers were found in *October*, when these repairs were done, they could not have been rotten in *January*, when she received her damage.

And the defendant grounds his reasons for not paying the said insurance, first, on that part of the policy's Contents, which asserts the ship to be tight, staunch, and strong; and, barring future accidents, able to go through the voyage; whereas, he supposes this vessel not to have been so, as he thinks is clear from the preceding affidavit, and from the verbal evidence of one of the surveyors: to which he adds, in order to make the proof of her defects the stronger, that on her first setting out she belonged to two Jews, who, on her return to *Dover* Pier the first time, sold her to Mr. *Richard Glover*, a considerable merchant of this city, who ordered her to be repaired, and actually laid out upon her one hundred and fifty pounds; which, as it ap-

pears, was in a manner thrown away, as on her second return she was condemned, broke up and sold in parcels; and her incapacity to proceed on her voyage having been so apparent from the foregoing survey, as to induce Mr. *Glover* to desire the shippers to take their goods out, though he had got three hundred pounds insured on her, he seemed so sensible of the deceitful bargain with the *Jews* in selling him an old rotten ship, that he never demanded one farthing of the said insurance from the underwriters.

That the plaintiff had no interest in the vessel, and therefore this was only a gaming policy; and as it is a general rule in all cases of interest or no interest, that there must be a total loss before the insured can recover; and the insurer, by this policy, being free from average, or a partial loss, it seems to be the principal question in this case, whether the ship brought into *Dover* Pier, there condemned as rotten, divided into lots and sold, will be considered in the agreement or wager, as a total loss? And to enforce the contrary, the defendant remarks, that there was no loss at sea, no capture, but a deliberate act done by the owner, upon a regular survey, which occasioned her being broke up, not by reason of the damage she had received, but from the rottenness of the principal parts of her works. Verdict for the plaintiff. *Arnold v. Godin.*

*Lex Mercat. Re-
deviv. 282.*

The plaintiffs having received orders from Mr. *John Jones*, of *Boston*, in *New-England*, to make some insurance for him on the *Reprisal*, Captain *Gowen*, and also on her goods and freight at and from *Cape Fare* in *North-Carolina* to *Bristol*. Underneath the policy for

for the ship only, was inserted the subsequent words or declaration : viz.

“ The following insurance is on the ship
“ only, valued at the sum insured.”

On which part the defendant underwrote one hundred pounds.

The ship sailed from *Cape Fare* with a cargo of pitch, tar, &c. in prosecution of her voyage for *Bristol*, and had got within one hundred and fifty leagues to the westward of *Cape Clear* in *Ireland*, when she was attacked and taken by three *French* ships bound for *Newfoundland*, where they carried her and her cargo to a *French* port called *Carpeon*, after having first taken out all her men, and dispersed them aboard their own ships.

On their arrival at the aforesaid port, the captors took out all her pitch (being two hundred and three barrels) some tar, what rice was aboard, &c. And after detaining her about three or four weeks in the said port, the captors offered Captain *Gowen* his ship and remaining cargo for nine thousand five hundred livres (about four hundred and twenty-five pounds sterling) which he accepted, and became the purchaser thereof on those terms, leaving his son as an hostage for the payment of the ransom.

The ship departed from *Carpeon* for *Bristol*, and on her voyage met with very bad weather, which broke her rudder; and was forced to put into *Appledore*, in *Devonshire*, the first port they could make with safety) where the captain, first and second mates, boatswain, and a foremast man, made a protest on their oaths, giving such an account as the preceeding.

Insurances.

The captain having purchased the ship and cargo, as before mentioned, on his arrival at *Appledore*, applied to Mr. *Perkins* of *Bristol*, to whom he was consigned by *Jones*, the owner, who refused to pay the ransom money, or have any thing to do with the ship or cargo, and then the captain came to *London* to the insurers; and those who insured on the goods impowered and desired him to sell the cargo for what he could, in order that if it produced more than the ransom, they might have the benefit; but the insurers on the ship would not intermeddle, or give any directions about it.

The captain returned to the ship, and sold that and the cargo jointly for above one hundred pounds less than the redemption-money, after deducting charges; and he has been obliged to pay, or give security for the remainder, to procure his son's liberty.

The ship being thus taken, and carried into an enemy's port, where she was detained a considerable time, and had great part of her cargo taken out by the captors, and afterwards meeting with other misfortunes, which occasioned her producing less than the ransom-money, and consequently to prove a total loss, to be made good by the insurer.

The preceding is a state of the case, and of the plaintiffs demands, who think themselves intitled to a total loss, as the policy was valued; but the defendant, on the contrary, pretends, that as part both of the ship and goods were saved, he is intitled to an average, and not subject to an intire loss; but the jury found a verdict for the plaintiff. *Lane and Caswall v. Collyer.*

Lex Mercat. Re-
devit. 268.

The *Mary*, Captain *Wilson*, was hired at *London* to carry goods to *Dublin*, and an insurance was made on ship and freight; but in
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her passage she ran ashore on the sands called *Artelow Grounds*, and was there deserted by the captain and sailors, who went ashore to save their lives, supposing the ship irretrievably lost; but some fishermen, hearing of the wreck the night before, went out after her, and early in the morning spied a sail off *Mayenhead*, near *Artelow* in the county of *Wicklow*, and about thirty miles from *Dublin*, lying afloat in about ten or eleven fathom of water, and about a mile and a half from shore, which proved to be the aforesaid ship *Mary*, and on coming up with her in the last quarter ebb, they found the ship lying to, with her gib sail hauled to windward, and her mizzen sail set, and on boarding her, found her entirely deserted, without one person therein.

After the fishermen had got in, they found the pumps, and found so little water in her, that two hands cleared her in an hour's time, after which she leaked but very little; and some few hours after the fishermen meeting with a pilot, agreed with him for half a guinea to carry her into *Polebegg* (which is a place where ships bound for *Dublin*, that draw much water, are unloaded and discharged) where she was delivered to Captain *Wilson*, who took her in charge, and was afterwards moored, and all her cargo delivered safe and undamnified, and the freight accordingly paid for the same.

The ship was, after her discharge, removed from *Polebegg* to the bank-side, and there lain on the ground to search if she had received any damage, and it was found that nine or ten feet of her sheathing was rubbed off, and about the same quantity of her false keel broke, and the ship strained very much, so that they were forced to carry her back to *Polebegg*, and there moor again.

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The plaintiff demanded the whole insurance, which was seven hundred pounds, on a supposed proof of the ship's being rendered unfit for any future service by her being run ashore, as aforementioned; and the defendant tries to invalidate his claim, by first endeavouring to prove, that she could not be of near the value insured, as she was an old *New England* built ship, and sold a little before, to be broke up, for one hundred and fifty pounds; but the purchaser re-sold her to another, who sold the moiety thereof to the plaintiff, as he asserts, for four hundred pounds, the truth of which sale the defendant suspects, as well upon account of the lowness of the first purchase, as an erasure upon which the concern was wrote; and he likewise offers some reasons to suppose, that the ship was wilfully run ashore, and not undesignedly, as the captain asserts. And to support these allegations, he refers to the manner in which she was found, with little or no damage, as aforesaid, more than what was occasioned by her lying aground. That the captain had a very bad character, and it was suspected he had made large insurances, which induced him wilfully to lose the ship, more especially as the mate had declared, that if the captain would have left him two boys, he would not have quitted the ship; and several other things to the said purpose; but these not appearing so plain to the jury, they found a verdict for the plaintiff. *Hussey v. Hewit.*

Mag Insur. 533,
559.

Peter Joyce, a mariner, being a part owner of one moiety of a ship called the *Good Fellow* privateer, together with the other owners, fitted her out in a warlike manner, to cruize against his majesty's enemies, and in *April*, 1744, obtained a proper commission for that purpose from

from the lords of the admiralty. Mr. *Joyce* being himself the master of the ship, and aboard, employed Messrs. *George Fitzgerald*, uncle and nephew, and partners, to make an insurance for his interest and use. They accordingly procured a policy of insurance for a thousand pounds, hereafter particularly set forth, to be signed by several underwriters, among whom the defendant *Charles Pole*, underwrote for one hundred pounds on the 31st of *August*, 1744.

Mr. *George Fitzgerald* the elder died in *March*, 1743, and the right of action on this policy survived to Mr. *George Fitzgerald*, the now plaintiff.

The purpose for which the *Good Fellow* privateer was fitted out and employed, during the time for which the insurance was made, being on the 14th day of *June*, 1744 totally defeated by a mutiny of the sailors on board, their desertion from her, and carrying off the fire-arms belonging to the ship, ; the plaintiff, in *Hil.* term, 1748, on the behalf and for the use of *Peter Joyce*, brought an action on the case in the court of King's Bench, against the defendant *Charles Pole*, in which he declares as follows :

Whereas on the 31st day of *August* in the year of our Lord 1744, the said *George* the elder, and *George* the younger, whom the said *George* the younger hath survived, were partners together in the way of trade and merchandize, to wit, at *London* aforesaid, in the parish of *St. Mary Le Bow*, in the ward of *Cheap*; and the said *George* the elder and *George* the younger, being so partners together, on the same day and year, at *London* aforesaid, in the parish and ward aforesaid, according to the custom

Insurances.

custom of merchants, caused to be made a certain writing or policy of insurance, purporting thereby, and containing therein, that the said *George* the elder and *George* the younger, by the names of *George Fitzgerald* and company, as well in his own name, as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from *Jamaica* to any ports and places where and whatsoever, at sea or shore, a cruizing from port to ports, and place to places, for and during the term and space of four calendar months, upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the *Goodfellow* privateer, whereof was master under God, for that voyage, *Peter Joyce*, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called; beginning the adventure upon the said ship, &c. from and immediately following the fourteenth day of *June* then last; and so should continue and endure, untill the said ship, with all her said tackle, apparel, &c. should be arrived at any ports and places, where and whatsoever, a cruizing from port to ports, and place to places, for and during the term and space of four calendar months, commencing as above written without prejudice to that insurance; the said ship, &c. for so much as concerned the assured, was and should be valued (one half part of the ship) at one thousand pounds sterling, without further account to be given by the assured for the same. Touching the adventures and perils which they the assurers

rers were contented to bear, and did take up-
 on them in that voyage, they were, of the seas,
 men of war, fire, enemies, pirates, rovers,
 thieves, jettizons, letters of mart and counter-
 mart, surprisals, taking at sea, arrests, restraints,
 and detainments of all kings, princes and peo-
 ple, of what nation, condition, or quality foe-
 ver, baratry of the master and mariners, and of
 all other perils, losses, and misfortunes, that
 had or should come to the hurt, detriment, or
 damage of the said ship, &c. or any part there-
 of; and in case of any loss or misfortune, it
 should be lawful to the assured, their factors,
 servants, and assigns, to sue, labour, and travel,
 for, in and about the defence, safeguard, and
 recovery of the said ship, &c. or any part
 thereof, without prejudice to that insurance;
 to the charges whereof they the assurers would
 contribute each one, according to the rate and
 quantity of his sum therein assured: and it
 was agreed by them, the insurers, that that
 writing or policy of assurance should be of as
 much force and effect as the surest writing or
 policy of assurance, theretofore made, in *Lom-
 bard-street*, or in the *Royal Exchange*, or else-
 where in *London*: and so they, the assurers,
 were contented, and did thereby promise and
 bind themselves, each for his own part, their
 heirs, executors, and goods, to the assured,
 their executors, administrators, and assigns, for
 the true performance of the premises, con-
 fessing themselves paid the consideration due
 unto them for that assurance by the assured,
 at and after the rate of twenty guineas *per cent.*
 and in case of loss, (which God forbid) the as-
 sured to abate but two pounds *per cent.* the as-
 surers being free from all average, as by the said
 writing, or policy of assurance, it doth and may
 more fully appear; of which said writing, or
 policy

policy of assurance, so made as aforesaid, he the said *Charles*, afterwards, to wit, on the said 31st day of *August*, in the said year of our Lord, 1744, at *London* aforesaid, in the parish and ward aforesaid, had notice ; and thereupon he the said *Charles*, afterwards, to wit, upon the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid in consideration that the said *George* the elder, and *George* the younger, at the special instance and request of the said *Charles*, had undertaken, and then and there faithfully promised the said *Charles* to perform and fulfil every thing in the said writing, or policy of assurance mentioned, on their parts and behalves to be performed and fulfilled, and had then and there paid to the said *Charles* twenty guineas as a reward for the assurance of one hundred pounds, upon the said premises, mentioned and contained in the said writing, or policy of assurance ; he the said *Charles* undertook, and then and there faithfully promised the said *George* the elder, and *George* the younger, that he the said *Charles* would become, and he did then and there become an assurer to the said *George* the elder and *George* the younger, for the sum of one hundred pounds, on the premises mentioned in the said writing or policy of assurance ; and that he the said *Charles* would perform and fulfil every thing in the said writing, or policy of assurance, contained to be performed on his the said *Charles*'s part and behalf, as such an assurer, as to the said one hundred pounds, by him so assured, and then and there subscribed the said writing, or policy of assurance, for the assurance of the said one hundred pounds : and the said *George*, the now plaintiff, further saith, the said insurance, so made by the said *George* the elder, and *George* the younger, as aforesaid, was made
for

for, and on account of, and in trust for, and for the use and benefit of *Peter Joyce*; and that the interest which the said *Peter Joyce*, at the time of making the said insurance, as aforesaid, and during the said cruize and voyage hereafter mentioned, had in the said ship, being a privateer, amounted to a large sum of money, to wit, two thousand pounds and upwards; and that the said ship, on the said 14th day of *June*, in the said writing, or policy of assurance, mentioned, in the said year of our Lord, 1744, being at *Jamaica* aforesaid, in parts beyond the seas, in good safety, set sail, and departed from thence in and upon her said intended voyage a cruizing, according to the intention of the said writing, or policy of assurance; and from and after the said fourteenth day of *June*, was a cruizing from port to ports, and place to places, until the said ship afterwards, and within the said four calendar months, commencing from the said 14th day of *June*, to wit, on the 23d day of *September*, in the said year of our Lord, 1744, then sailing upon the high seas, and at a great distance from *Jamaica* aforesaid, and proceeding in her said voyage, was in a mutinous manner, by force and arms, against the will of the then master and officers of the said ship, seized, taken, restrained, and detained by the greatest part of the mariners then on board her; and the command, direction, and government thereof were taken from the said master; and the said ship was not permitted to sail and proceed in her said voyage a cruizing any longer, but was then and there, contrary to and against the will of the said master and officers, by the said mariners, in a mutinous manner, carried back again to *Jamaica* aforesaid, where the said mariners afterward, to wit, on the 30th day of the same *September*, being then
and

Insurances.

and there arrived with the said ship, against the will of the said master and officers, run away from the said ship, with the boats belonging to the same ship, and totally quitted and deserted her, whereby, and by means whereof, the said ship did not, nor could not, perform her said voyage a cruizing for and during the said four calendar months, according to the intention of the said writing, or policy of assurance; but, from the time of taking, seizing, and detaining of the said ship, as aforesaid, for and during the residue of of the said four calendar months then to come and unexpired, was totally disabled to perform the same, whereby the owners and proprietors of the said ship totally lost all profit, benefit, and advantage that might have accrued to them in and from the said cruize during the residue of the said four calendar months; of all which premisses the said *Charles Pole* afterwards, to wit, on the first day of *May*, in the year of our Lord 1745, at *London* aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested by the said *George* the elder and *George* the younger, to pay to them ninety-eight pounds, parcel of the said one hundred pounds, deducting two pounds residue thereof, in respect of the said loss, which the said *Charles*, according to the form and effect of the said writing, or policy of assurances, and of his said promise and undertaking, then and there ought to have paid to the said *George* the elder and *George* the younger.

There were two other counts in the declaration, which, being found for the defendant, are not material.

To this declaration the defendant pleaded the general issue.

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The cause was tried at the sittings in *London*, before Lord chief justice *Lee*, by a special jury; when, at the request of the defendant's council, a special verdict was found, that the said *Charles*, on the thirty-first day of *August*, in the year of our LORD 1744, in the city of *London*, did sign and subscribe the policy of assurance in the declaration mentioned, in the words and figures following: that is to say,

“ In the name of God, amen. *George Fitz-gerald*, and company, as well in his own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance, and causeth himself and them, and every of them, to be insured, lost or not lost, at and from *Jamaica*, to any ports and places where and whatsoever, at sea or shore, a cruizing from port to ports, and place to places, for and during the term and space of four calendar months, upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture. of and in the good ship or vessel called the *Goodfellow* privateer, whereof is master, under God, for this present voyage, *Peter Joyce*, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called, beginning the adventure upon the said ship, &c. from and immediately following the 14th day of *June* last; and so shall continue and endure until the said ship, with all her said tackle, apparel, &c. shall be arrived at any ports and places where and whatsoever, a cruizing from port to ports, and place to places, for and during

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Mag. Insur. 552;

Insurances.

the term and space of four calendar months, commencing as above written, without prejudice to this insurance ; the said ship, &c. for so much as concerns the assured, is and shall be valued (one half part of the ship) at one thousand pounds sterling, without further account to be given by the assured for the same, touching the adventures and perils which we the assurers are contented to bear, and take upon us in this voyage, they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jet-tizons, letters of mart and countermart, surprizals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition or quality soever, baratry of the master and mariners, and all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said ship, &c. or any part thereof : and in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel, for, in, and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance, to the charges whereof we the assurers will contribute each one according to the rate and quantity of his sum herein assured. And it is agreed by us the insurers, that this writing, or policy of assurance shall be of as much force and effect, as the surest writing or policy of assurance heretofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London* ; and so we the assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this

this assurance, by the assured, at and after the rate of twenty guineas *per cent.* and in case of loss (which God forbid) the assured to abate but two pounds *per cent.* the assurers being free from all average. In witness, whereof we the assurers have subscribed our names and sums. Assured in *London* this 30th of *August*, 1744, one hundred pounds. *Charles Pole*, one hundred pounds *prem.* Received 31st *August*, 1744.

And the said jurors further said, that the said ship *Goodfellow* was safe at *Jamaica* the 14th day of *June*, 1744, and sailed from thence the same day upon the cruize in the policy before-mentioned; and that the said ship was an *English* privateer, and duly commissioned as such by the lords commissioners of the admiralty of *Great Britain*.

And the said jurors further said, that during all the time of the said cruize, there was open war carrying on by the king of *Great Britain* against the *French* king and the king of *Spain*, and that on the tenth day of *July*, 1744, the said ship *Goodfellow*, in her said cruize, met with a *French* ship, with money and goods on board to the value of four thousand and two hundred pounds sterling, and made prize thereof; and that afterwards, *viz.* upon the 31st day of *August* following, *Peter Joyce*, the captain of the said ship *Goodfellow*, being through illness unable to continue in the command of the said ship *Goodfellow*, quitted the said ship, with the consent of all the crew thereof; and the first lieutenant thereof, *John Hussey*, was, by joint consent of the said captain, and all the sailors and mariners belonging to the said ship, appointed commander thereof. And the said jurors, upon their said oath, further said, that

Insurances.

the said ship *Goodfellow*, under the command of the said *John Hussey* (on whom the said command would necessarily have devolved, in case of the said captain *Peter Joyce*'s death) was sailing on the said cruize, for a port or place called the *River of Dogs*, to get water; and afterwards, whilst the said ship was necessarily sailing for the said *River of Dogs*, as aforesaid, and within the four months mentioned in the said policy, viz. on the twenty-third day of *September*, 1744, the crew of the said ship mutinied against the said commander *John Hussey*, and officers, and by force carried the said ship, against the will of the said commander *John Hussey*, and officers, who could not resist the same, back towards *Jamaica*, and, before her arrival in port there, causelessly, against the consent of the said commander, *John Hussey*, seized the boat, fire-arms, and cutlasses belonging to the said ship *Goodfellow*, and carried off the same, and deserted the said privateer; by which the said cruise was totally prevented and lost for the remainder of the said four months, from the said twenty-third of *September*: and the said jurors, upon their said oaths, further say, that the said ship *Goodfellow* arrived at *Jamaica* upon the 29th of *September*, in the said year 1744, and was there in good safety at and after the end of the four months aforesaid; but was prevented by the said mutiny and desertion, as aforesaid, from further pursuing her said cruise. And the said jurors, upon their said oaths, further say, that the insurance upon the said ship *Goodfellow* was made for the account of *Peter Joyce*, the owner: and also the captain, for the former part of the said cruise; and that the said *Peter Joyce* had interest during all the time of the said cruise, in the said ship *Goodfellow* to the amount of the sum insured; but whether, upon the whole matter
by

by them, the said jurors, in form aforesaid, found, the aforesaid *Charles Pole* did undertake and promise, in manner and form aforesaid or not, the said jurors know not, but pray the advice of the court thereupon; and if, upon the whole matter, by them the said jurors, in form aforesaid, found, the said court shall be of opinion that the aforesaid *Charles Pole* did undertake and promise, in the manner and form within written; then the said jurors, upon their said oaths, say, that the said *Charles* did undertake and promise, in the manner and form as the said *George Fitzgerald* hath declared, and assess the damages of him the said *George Fitzgerald*, upon the occasion, besides his cost and charges, by him, about his suit in this behalf sustained, to ninety-eight pounds; and for those costs and charges to forty shillings: but if, upon the said whole matter, by the said jurors, in form aforesaid, found, the said court shall be of opinion, that the said *Charles Pole* did not undertake and promise, in manner and form as the said *Charles Pole* by his plea hath alledged; then the said jurors, upon their said oaths, say, that the said *Charles Pole* did not undertake and promise in manner and form as the said *Charles Pole* by his plea hath alledged.

Upon this verdict, the court of King's Bench, upon argument, gave judgment for the plaintiff; upon which a writ of error was brought in the Exchequer chamber; and, after twice arguing the case, the judgment, by the unanimous opinion of all the eight judges of that court was reversed.

The plaintiff brought his writ of error in parliament against the judgment pronounced in the Exchequer chamber. The general er-

Mag. Insur. 540.

Insurances.

rors are assigned, and the defendant has pleaded there is no error; and thereupon issue is joined.

It is found, that, by the mutiny, &c. the voyage and cruize was totally prevented and lost, for the remainder of the four months, from the twenty-third of *September*.-----It is averred, that *Peter Joyce* had interest, during the cruize in the ship, and found, that he had interest in the ship to the amount of the sum insured:

That the ship was in being at and after the end of the four months.

The general question is, Whether an event has happened, upon which the underwriters, by the terms of the policy, are to pay?

Though different accounts are given of the invention of insurances, yet they certainly were brought into practice by merchants for the sake of trade, and in order to divide the risk.

The nature of the contract originally was, that a specified voyage should be performed free from perils: and, in case of accident, the insurer was for a certain price to bear the trader harmless.

Hence it followed, that this contract originally related to the safety of a voyage particularly described, in respect either of a ship or cargo, and that the insured could not recover beyond the amount of his real loss: therefore, without abandoning what was saved to the insurer, he could not recover the whole value, except in case of a total loss.

A very inaccurate form of this contract was anciently used among merchants and drawn by themselves.

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It was brought into *England* by persons who came from abroad, and settled in *Lombard-street*.

The terms of this contract, though very imperfectly penned, having acquired a sense from the usage of merchants, the form is followed to this day; and every policy refers to those made in *Lombard-street*.

Hence, contrary to the general rules, parole evidence is admitted to explain this contract, though in writing; and the words are controuled, or liberally supplied, by the intent of the agreement, the usage of merchants, and, above all, by judicial determinations, which are the strongest evidence of the received law of merchants.

Upon these policies the voyage, and not the bare safety or existence of ship or cargo, is the subject matter of the insurance.

In process of time, variations were made, by express agreement, from the first kind of policy. It being troublesome to the trader to prove the value of his interest, and ascertain the quantity of the loss, he gave the insurer a high premium to agree to estimate his interest at a precise sum, and to give up his claim to what might be saved; and the insured, on the other hand, waived any claims of contribution, in respect of accidents which might obstruct, but not defeat the voyage.

To recover upon this kind of policy, the insured need only prove, that he had an interest without shewing the value.

Cases where it might not be proper for the trader to disclose the nature of his interest, introduced a third kind of policy, where the insurer dispensed with the insured having any interest either in a ship or cargo.

Insurances.

In these two last kinds of policy, valued free from average, and interest or no interest, it is manifest that the performance of the voyage or adventure, in a reasonable time and manner, and not the bare existence of the ship or cargo, is the object of the insurance; and so it has been often adjudged, as appears by the several cases following:

Comyn. 360.

Insurance on an hoy used for a packet-boat from *Helvoetsluys* to *Harwich*, interest or no interest, without further account. The hoy, in her voyage, was taken by a *Swedish* ship (tho' no war then between *Sweden* and *Great-Britain*). After being nine days in the custody of the *Swedish* ship, the hoy was retaken by an *English* man of war, carried to *Copenhagen*, and from thence to *Harwich*, where she was at the time of the trial.

A verdict was given for the plaintiff, subject to the opinion of the court of C. P. The case was twice argued; first by civilians, and then by common lawyers; and the court gave judgment for the plaintiff, though the ship was then in being at *Harwich*. The question was not, Whether the property of the ship was lost by the capture? but, Whether the capture was a peril insured against, and had happened in the voyage? *Depaiba v. Ludlow*.

Insurance on the ship called the *Ludlow Castle* man of war, from *Jamaica* to *England*, interest or no interest, free of average, &c. This ship was in her voyage compelled by storms at sea to put into *Antigua*, where Admiral *Knowles*, being in want of a hulk for his majesty's service, thought proper to convert the *Ludlow Castle* to that use. The treasure on board her was brought home in the *Scarborough*. The insured brought his action; and though it appeared

appeared in evidence that the ship was existing, and upon the establishment, it was determined, and by a special jury a verdict given accordingly, that the voyage from *Jamaica* being lost, the plaintiff was intitled to recover, which he did. *Barclay and Collier.*

Insurance on the *Sarah* galley, at and from *London* to *Gibraltar*, and from thence to *London*, valued at the sum insured. This ship was chartered from *London* for *Gibraltar*, and thence to the *Nore*, to receive orders from the freighter; and the plaintiff was the sole owner of the ship. The ship arrived at *Gibraltar* in *June*, and was loaded with wines by the freighter's correspondent for her return voyage. At *Gibraltar* the ship was seized by the *Salisbury* and *Soleby* men of war. The master was turned out of possession, and several of the sailors impressed. The captors proceeded against the ship and cargo as forfeited. The ship was ordered to be restored, and was sent by the freighter's correspondent with a cargo for *Dunkirk*, where she was afterwards overset and lost. An action was brought by the insured, and though it was relied on for the defendant, that the ship was not totally lost, but had been delivered after the capture to the agent of the freighter, and by him sent another voyage; yet, as the taking at *Gibraltar* was a breach of the policy in the voyage, whereby the return voyage was prevented, a special jury gave the plaintiff a verdict for a total loss; and he had judgment accordingly. *Storey v. Brown.*

Insurance on the *Anna*, at and from any port or place, or degree of latitude wheresoever the ship might be on the 7th of *May*, 1741, to any port, place, and degree of latitude, until her arrival at *London*, interest or no interest, free of average, &c. This ship was a tender to the ships sent to the *South Sea* under the command of

Insurances.

of Lord *Anson*, and proceeded to the island of *Juan Fernandez*, where she was unloaded and discharged the king's service. But being in want of stores to return to *England*, she was sold for the use of the fleet by the captain for three hundred pounds, for which he received a bill on the commissioners of the navy, afterwards paid to the plaintiff, the sole owner, together with the freight, and all the sailors wages, to the time of the sale of the ship. The plaintiff and owner also received six thousand, four hundred and ten pounds for the freight of the outward bound voyage, and two thousand, five hundred and ninety pounds, as seven months freight, being the time computed the ship would have taken to return home. An action was brought on the policy, and although it was insisted on for the defendant, that the ship had not been destroyed by any peril in the policy, but sold by the owner for the use of the government, who had, for the convenience of the service, disposed of her as was thought fit; and that the insured had actually received a price and freight for her, as having performed her homeward bound voyage; so that, if there was any loss in point of value, it would only be a partial and average loss, which was expressly not to charge the insurers: yet upon all the above facts (agreed between the parties) as the ship had been rendered incapable of performing the service for which she was fitted out, *viz.* attending the fleet in the *South Seas*, and home, the plaintiff recovered a verdict for a total loss, by a special jury, agreeable to the directions of the court. *Hanbury and King.*

Insurance on goods in the *Dursley* galley, interest or no interest, free of average, &c. at and from *Jamaica* to *Bristol*. The ship was in her voyage taken by a *Spanish* privateer, and carried

carried into a port in *Spain*, where, after being kept for eight days, she was cut out by an *English* privateer. The insured brought an action on the policy. The insurer insisted it was only an average loss, the ship and goods existing, and by statute were to be restored to the owners on salvage. But it was determined, and by a special jury a verdict given accordingly, that notwithstanding the existence of the ship and goods, yet the insured voyage being lost, the plaintiff was intitled to recover upon that policy. *Dean and Dicker.*

Insurance on the *Dispatch* galley, interest or no interest, free of average, &c. from *Jamaica* to *Hull*. In her voyage she was taken by a *French* privateer, and carried to *Hamburg*, and after being twelve days in the hands of the enemy, she was retaken by *Hurst*, master of an *English* ship, and brought to *London*, where she was adjudged to be restored to the owner, paying salvage. The owner sold the ship, and paid the salvage. An action being brought on the policy, notwithstanding the ship had not been lost, but was sold by the owner, it was held to have been a loss of the voyage, and the special jury gave a verdict accordingly. *Whitehead and Bance.*

Many other sorts of insurances upon other sorts of things in the nature of wagers or bargains upon contingencies, have been introduced, concerning which the agreement of the parties is the rule which governs.

That a man shall live such a time ; that one man shall outlive another ; that a voyage shall be performed in a given time ; that a ship shall arrive at such a port before such a fair ; and every other contingency may be assured at a fixed sum.

Many

Insurances.

Many merchants, with a view to their own gain, as well as public service, desiring to engage in fitting out privateers, the greatest expence of which consists in the outfit, the victualling, the stores, the advance money paid to the sailors, &c. they bethought themselves whether they could divide the risque by insurance.

By the first kind of insurance (open policies) they could not do it, because there was no cargo; and the value of the ship was not the measure of the owner's expence and risque.

They could not do it, according to the second or third kind, describing any particular voyage. The way therefore taken was to insure the ship from all perils enumerated, as a privateer, to cruize during a limited time; and such insurance of privateers is a modern practice.

The very end of this contract shews, that the capacity of the ship to cruize, notwithstanding the perils, and not the existence or the property of the ship, at the end of the limited term, is the subject matter of such an insurance; and this is not only the obvious meaning of the parties to such a contract, but judicial determinations have declared this to be the sense.

Insurance for three months from the 21st of December, 1744, upon the *Salamander* privateer, to any port or places whatsoever, interest or no interest, free of average, &c. The privateer was taken in the second month by a *French* man of war, who took the captain and most of the privateer's men, with the commission and provisions, on board his own ship, and was carrying his prize into *France*. On the 25th of *February* the privateer was retaken by an *English* ship, which took the *Salamander* with her on a cruize,

cruise, and then carried her into *Lisbon*, where she remained. An action being brought on the policy, a special verdict found; upon argument of which the court of King's Bench unanimously gave judgment for the plaintiff; and against this judgment no writ of error was ever brought. *Pond and King.*

Insurance on a privateer for two months. In the first month she was taken by the enemy, and retaken by Admiral *Martin*, who, before the end of the first month, sent her into *Bristol*. The privateer had received no damage in the engagement in which she had been taken, but what might have been repaired without any great expence, if she could have been put into a dock; but when she arrived at *Bristol*, the docks were full, and workmen so scarce, that she could not be repaired before the term in the policy expired. The plaintiffs brought their action: the defendant insisted, that, the ship existing, (he not having insured against the fullness of docks, and scarcity of workmen) he could not be liable for a loss: yet, as the two months cruise was lost by a peril within the policy, the plaintiffs had a verdict. *Jenkyns and Roberts against Mackenzie.*

An action upon the very same policy now in question against another underwriter, in which the plaintiff declared *verbatim*, as in this case. defended at the trial. A verdict for the plaintiff, by a special jury, agreeable to the direction of the court. Judgment accordingly. The defendant brought a writ of error, but despairing of success, suffered it to be non-pros'd, and paid the money and costs. *Fitzgerald and Wainhouse.*

The legislature has considered the insurance of privateers as beneficial, and plainly understood, that the existence of the ship was not the subject matter of the insurance.

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Insurances.

An act of 19 *Geo. II. c. 37.* which prohibits insurances, interest or no interest, provides, that assurance on private ships of war, fitted out by any of his majesty's subjects (solely to cruize against his majesty's enemies) may be made by or for the owners thereof, interest or no interest, free of average, and without benefit of salvage to the insurers.

There was no occasion to except the case of privateers, had the existence of the ship been looked upon as the only object; the value of the insurance might have been confined to the interest in the ship.

Upon some of the reasons and authorities above referred to, as well as others, the court of King's Bench gave judgment in this case for the plaintiff.

The objections to the judgment of the court of King's Bench, principally relied upon, seem to be these.

Objection I. As the ship existed at the end of four months, nothing was to be paid; the insurers only undertaking, that the ship should not be totally lost or destroyed within that time.

Answer. This objection proves, that if, during the whole four months, the ship had been by force turned into a fire-ship, or a transport, detained in port by an embargo, taken and kept by privateers, arrested and detained by princes, so disabled in a storm the first day, as not to be capable of going to sea during the time; provided the owners had the ship or her hull again, the insurers were to pay nothing; which, besides contradicting so many principles and authorities, proves more than will be seriously contended for, and drives the respondent to another objection.

Objection

Objection II. Suppose the meaning was to insure the ship's capacity to cruise (notwithstanding the perils mentioned) during four months ; yet, unless she was prevented by any of the means mentioned in the policy, during the whole time, nothing is to be paid ; for the insurance must be taken to be only against the intire loss of the whole time, but here, in this case, the ship cruized part of the time.

Answer. At this rate of arguing, if the ship was safe at any time on the 15th of *June*, there never could be a loss afterwards. Though she had been burnt, sunk, or taken on the 16th, the insurers would not be liable ; which, besides contradicting all the authorities in the cases of privateers (in every one of which the ship had cruized some time) reduces the four months to the first instant of that time, and therefore is a flat contradiction to the express terms of the policy.

Objection III. If the ship's capacity to cruise, and not the bare existence of the ship, was the thing insured, it is not found that *Peter Joyce* had any interest in the cruise, only that he was owner of, and had interest in the ship during the cruise.

Answer. The property of the ship carries an interest in her capacity to cruise. A public law having given prizes taken by privateers to and among the owner and owners of such ship or vessel, and the several persons that shall be on board the same, in such shares and proportions as shall be agreed on with the owner or owners of such ship or vessel, and to suppose the owner to have parted with his whole interest in the use of the ship, during the cruise, and yet to have retained his interest in the privateer during the cruise, is to make an intendment contrary to the averment in the declaration, and finding of
the

Insurances.

the verdict ; and to suppose a case which never existed in fact, that the owner lets her out on freight, to cruize as a privateer.

The parties on this contract have agreed, and understood, that the use of this ship was attendant upon the property; for they have insured the ship's capacity to cruise, and valued it on the ship.

There have been judicial determinations, and one upon this policy, in favour of what the plaintiff in error contends for, unreversed and unappealed from. People probably have transacted losses upon their authority, and entered into contracts, according to the sense judicially received in mercantile contracts, especially for the sake of certainty, it is better to adhere to decisions, even if they were at first erroneous. All new contracts are made in the sense of the judicial determinations ; and, supposing an interpretation at first wrong, it becomes afterwards unjust to vary from it, and highly inconvenient.

Reasons.

1. The insurer being by the terms of the policy free from all average, the plaintiff could not be intitled to recover, but in case of a total loss ; and the ship being found by the special verdict to be in good safety at her proper port, at and after the end of the four months, for which the insurance was made, there could be no such loss.

2. The ship alone is insured, and not the cruise ; and to contend otherwise is not only contrary to the express words, and plain meaning and intention of the policy, by which the ship alone is repeatedly expressed to be the thing insured ; but it is also contrary to the nature

the nature of an insurance; the safety of the ship itself, or of whatever else is the immediate object of the insurance, being the only thing insured; and not any uncertain benefit which may arise to the owner by means or in consequence of it: nor can any such consequential benefit be properly the subject matter of insurance, as it is not capable of being estimated. But,

3. Supposing the cruise, or the benefit of the cruise, or the free use of the ship for the cruise, to be the thing insured; yet, even of any of these there is no total loss; the ship having actually cruized till within about a fortnight of the whole time, and having taken a prize of the value of four thousand, two hundred pounds sterling. And,

4. Supposing, as contended for by the plaintiff, that the cruise, or benefit of the cruise, or the free use of the ship for the cruise, was the thing insured; and that what is found by the verdict amounts to a total loss of any of these; yet it is not found, nor is it averred in the declaration, that *Peter Joyce*, for whose benefit the insurance was made, had any interest in the cruise, but only in the ship itself; and to recover in an action upon a valued policy, the plaintiff must aver an interest in his declaration, and prove it at the trial. *Fitzgerald v. Pole*, in the House of Lords.

Here follows the Judgment.

Friday, the first day of March, 1754.

WHEREAS, by virtue of his majesty's writ of error, returnable into the House of Lords in parliament assembled, a record of the
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court

Insurances.

court of Exchequer chamber was brought into this house, the 18th day of *December*, 1753; wherein *George Fitzgerald* is plaintiff, and *Charles Pole* defendant: and council having been heard, as well on *Wednesday* the 20th of *February* last, as on the *Thursday* and *Friday* following, to argue the errors assigned upon the said writ of error; and the judges who were ordered to attend, having been heard, *seriatim*, as well on *Wednesday* last as this day, to deliver their opinions, with their reasons, upon certain points of law to them proposed, and, due consideration had of what was offered on either side in this cause: it is ordered and adjudged, by the lords spiritual and temporal, in parliament assembled, that the judgment given in the said court of Exchequer-chamber, reversing a judgment given in the court of King's Bench, be, and the same is hereby affirmed; and, that the record be remitted. And it is further ordered, that the plaintiff in error do pay, or cause to be paid, to the defendant in error, the sum of five pounds, for his costs in this house.

A C. Cler. Parl.

Remarks on the preceding Case.

First, In our humble opinion, the chief thing necessary to the forming of a right judgment of the case was, to shew wherein the words of this policy differ from those of other policies made at interest or no interest; on which, in cases somewhat like this, insurers had formerly been condemned to pay total losses: for it appears to us, that when this cause was first heard, it was not sufficiently explained to the judge

judge and the jury : that, although it is said in this policy, that the insurers should be free of average, it is not said therein, that the insurance should be without benefit of salvage ; which clause constitutes the main difference between policies made on interest or no interest, and those made on real interest ; a renunciation of the salvage being never made in the latter. Hence, on ships insured at interest or no interest, once taken, although afterwards retaken, the insurers have been condemned to pay total losses, because they renounced the benefit of salvage. In insurances made at interest or no interest, free from average, and without benefit of salvage (which, though they are very hazardous, high premiums will tempt insurers to underwrite) the words of the policies clearly import, that such insurances are to be understood merely as wagers, that the ships shall make the voyages mentioned in the policies, and the insurers shall have nothing to do with averages or salvages. If in the present case the policy had been made with this condition, “not to have any benefit of salvage,” probably the court of Exchequer, considering the literal sense of the words, and what decisions had passed formerly on such policies, might have confirmed the sentence given in the court of King’s Bench, condemning the insurers to pay a total loss ; since the ship, for the time the mutineers were masters of her, might be esteemed as lost to the owners, and the insurers had renounced the salvage.

2. With regard to the case of *Pond v. King*, cited by the plaintiff’s council, where a ship being taken, though afterwards retaken, the insurers were condemned to pay a total loss, we observe that in the printed case it is only said, that it was an insurance on interest

* Lex Mercat.
272.

or no interest, free of average, &c. and it is in this case left out, that we find a material difference between that and the present policy; for in * *Pond's* policy, after the words *to be free of average*, follows *and without benefit of salvage*; which this policy has not. We also find, in some of the other cases of interest or no interest, policies alledged here, that a stop is made after the words *free of average*; and perhaps they might contain the other condition also, *without benefit of salvage*; so that all those policies might differ from the present one, and prove nothing in its favour.

Thirdly, Although the act of parliament of 19 *Geo. II. c. 37. sect. 2.* permits, for the encouragement of privateering, insurances to be made on privateers at interest or no interest, free of average, and without benefit of salvage, it does not follow, that all policies on privateers were made so, or are to be construed as if these conditions had been expressed in them.

In the argument for the plaintiff, it is said, "The general question is, Whether an event has happened upon which the under-writers, by the terms of the policy are to pay?"

Now it must, we think, be allowed that something did happen for which the insurers had made themselves answerable; and that was, the baratry of the mariners: for the mutiny of the mariners, their actually taking the command from the master, was certainly baratry; and the ship, during the time she remained out of the power of the captain, might be considered as lost to the owners: but as the mutineers carried her back to *Jamaica*, and there left her, and the benefit of salvage was not given up by the insurers, it was no total loss, and nothing else could be demanded, than what was proved to have been lost by the mutiny. Now, as
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it appears that the crew actually ran away within the term for which the ship was insured, with part of her fire-arms and boats, things expressly mentioned in the policy, and included in the valuation of the ship, how much, or how little soever this might amount to, it certainly was no average, but a partial loss, for which the insurers were liable to pay : and though we are sensible that the insurers had nothing to do with the success or miscarriage of the cruise, yet, as it is well known to every insurer, that the amount of the provisions put on board for the use of the voyage, and the money advanced to the sailors, are usually included and insured in the valuation of the ship, it is a question with us, whether the consumption of the provisions by the mutineers, whilst they had the command of the ship, and neglected the service of the owners, ought not to be considered as a loss to the owners, which the insurers are to make good ?

Thus much we have thought proper to alledge for and against the plaintiff's printed case.

As to the defendant's printed case, it may be observed, that one of the reasons alledged for affirming the judgment of the court of Exchequer, is, that the insurers being by the terms of the policy free from all average, the plaintiff could only be intitled to recover in case of a total loss. But in our opinion the inference is not just ; for the stipulation to be free from average did not make them free from the actual losses sustained by baratry and mutiny, which, to our experimental knowledge, were never comprehended under the word average, though inserting a clause in policies on privateers, not to be liable to bear any losses resulting from the mutiny and disobedience of the crews, may be a very prudent consideration

Insurances.

For the insurers in time to come, it was not done in this case, whereby the words *to be free of average* could only be meant, that the insurers should be free of all damages resulting from the cruize, particularly what the ship might sustain either in attacking or being attacked, crowding sail, or chasing, and thereby losing or breaking any thing; damage sustained by boarding, running foul of other vessels, receiving shot in her hull and rigging, &c. we make no doubt, but that if a separate demand had been made by the insured for the things run away with by the mariners, the insurers would have paid it.

Misinformation, perhaps, led the insured to try whether this valued policy would not have the same effect as other policies made on interest or no interest, with the conditions to be free of average, and without benefit of salvage, by virtue whereof the insurers had, in a parallel case, been condemned to pay a total loss; and it so happened, that the jury misunderstanding the thing, on the first hearing of this cause in the court of King's Bench, gave their verdict for a total loss. *Fitzgerald and Pole.*



Bottomry and Respondentia Bonds.

BOTTOMRY, or *Fœnus Nauticum*, is so called from the bottom of a ship, a part being put for the whole, and is in nature of a mortgage of a ship, by which the mortgagor, or obligor, in consideration of a sum of money, obliges himself to pay so much on the safe return of a ship; but in case the ship be lost, then the obligee, or mortgagee, to lose the whole money, according to the condition of the bond; and these kind of contracts are held lawful, and are usurious, though greater interest be reserved than the statutes allow, by reason of the hazard the lender runs, and being found useful for navigation and commerce.

Mol. B. 2. c. 11.
sect. 12. 560,
570. Skin. 153.

Money lent on bottomry is commonly on the ship only, though sometimes it is upon the person of the borrower, and sometimes on both. The first is where a man takes up money, and obliges himself, that if the ship agreed on arrives at such a port, then to repay the loan with the interest stipulated; but, if the ship miscarry, then nothing. But when money is lent at interest, it is delivered at the peril of the borrower, and the profit of this is merely the price of the loan, whereas the profit of the other is a reward for the danger and adventure of the sea, which the lender takes upon himself and makes the interest lawful.

Lex Mercat. Re-
deviv. 123.
Mol. B. 2. c. 11.
sect. 12.

“Whereas merchants and other traders frequently lend money on bottomree, or at respon-

19 Geo. II. c.
32. sect. 2.

Insurances.

dentia, and cause their vessels with their cargoes to be insured, and where commissions of bankruptcy have issued against the obligor, or assurer, before the loss of the ship or goods hath happened, it hath been made a question, whether the obligee, or the assured, should be let in to prove their debts, or be admitted to have any benefit under such commission, which may be a discouragement to trade; for remedy whereof it is enacted, that the obligee in any bottomree, or *respondentia* bond, and the assured in any policy of insurance, made *bona fide*, upon a valuable consideration, shall be admitted to claim; and after the loss or contingency, to prove the debt thereon, in like manner as if the same had happened before the issuing of the commission of bankruptcy, and shall receive a proportionable dividend of the bankrupt's estate; and every bankrupt shall be discharged from the debt on such bond and policy of insurance as aforesaid, and shall have the benefit of all the statutes against bankrupts, in like manner as if such loss or contingency had happened, and the money due thereon had become payable, before the time of the issuing of such commission."

19 Geo. II. c.
37. sect. 5.

"After the first of *August*, 1746 every sum lent on bottomry, or at *Respondentia*, upon any subjects ships, or to or from the *East Indies*, shall be lent only on the ship, or the merchandizes laden on board her, and so expressed in the condition of the bond; and the benefit of salvage shall be allowed to the lender, his agents, &c. who alone shall have a right to make assurance on the money lent; and no borrower of money upon bottomry, or at *respondentia*, as aforesaid, shall recover more on any assurance, than the value of his interest on the ship or effects, exclusive of the money borrowed:

borrowed : and if the value of his interest doth not amount to the money borrowed, he shall be responsible to the lender for the surplus, with lawful interest for the same, together with the assurance, and all charges, &c, notwithstanding the ship and merchandize be totally lost."

" In all actions or suits brought or commenced after the first of *August* by the assured, upon any policy of assurance, the plaintiff in such action or suit, or his attorney, &c. shall within fifteen days after he or they shall be required so to do in writing by the defendant, or his attorney, &c. declare in writing the sum he hath assured in the whole, and what sums he hath borrowed at *respondentia*, or bottomry, for the voyage, or any part of the voyage in question in such suit or action."

19 Geo. II. c.
32. sect. 6.

" After the said first of *August* any person, &c. sued in any action of debt, or covenant, &c. on any policy of assurance, may bring into court any sum of money, with costs to be taxed in full discharge of such action, and shall afterwards proceed to trial, and the jury shall not assess damage to such plaintiff, exceeding the sum so brought into court, such plaintiff shall pay to such defendant costs to be taxed."

Same statute.
sect. 7.

" This act shall not extend to, or be in force against any persons residing in any parts in *Europe* out of his majesty's dominions, for whose account assurance shall be made before the 29th of *September*, 1746, nor against persons residing in any parts of *Turky*, *Asia*, *Africa*, or *America*, from whom assurances shall be made before the 29th of *March*, 1747."

Same statute.
sect. 8.

Where A lends B one hundred pounds to freight a ship abroad, and they agree, that if the ship comes home safe, A shall have one hundred and fifty pounds ; and that if she do not,

Keb. 539, 711.
Cro. Jac. 208,
508. 5 Co. 70.
2 Rol. Rep. 48.

not, that he shall lose the one hundred pounds, this is not usury, but good by the custom of merchants, because of the great perils of the sea, and both principal and interest run the hazard of being lost; but if the principal be secured, and the interest only depend on an hazard, if it be more than is lawful, it is usury.

Lev. 54. Sid. 27.

So where the condition of a bottomry bond was, that if the obligor, or the ship, or the goods, return safe, then to pay more than the legal interest, this was adjudged good by the custom of merchants, though it depends on many contingencies, and though the obligee may be said to run little hazard, and though any of the contingencies become impossible; as if the obligor dies before his return, &c. yet the bond remains payable, contrary to the general rule of law in such cases, for the law supplies those words; *which shall first happen*, and forecloses the election of the obligor, and gives it to the obligee to take his remedy, on which of the contingencies shall first happen.

2 Chanc. Caf.
130. See 2
Salk. 444.

* If a ship deviate in her voyage and is after lost, Plaintiff who had lent money on her hull shall recover. Skin.
262, 263.

Vern. 263.

The plaintiff entered into a penal bond of bottomry to pay forty pounds *per* month for fifty pounds. The ship was to go from *Holland* to the *Spanish* islands, and so to return for *England*; but if she perished, the defendant was to lose his fifty pounds. She went accordingly to the *Spanish* islands, took in Moors at *Africa*, and upon that occasion went to *Barbadoes*, and then perished at sea. The plaintiff being sued on the bond and penalty, sought relief in equity, pretending that the * deviation was of necessity, but his bill was dismissed, saving as to the penalty.

J. S. entered into a bottomry bond, whereby he bound himself, in consideration of four hundred pounds, as well to perform the voyage within

within six months, as at the six months end to pay the 400*l.* and forty pounds præmium, in case the vessel arrived safe, and was not lost in the voyage; and it fell out, that J. S. never went the voyage, whereby his bond became forfeited, and he preferred a bill to be relieved, and in regard the ship lay all along in the port of *London*, so that the defendant run no hazard of losing his principal: the lord keeper decreed, that he should lose the præmium of forty pounds, and be content with his ordinary interest. *Deguilder v. Depeister.*

A part-owner of a ship borrowed money of the plaintiff upon a bottomry bond, payable on the return of the ship from the voyage; she was then going in the service of the *East India* company, and the *East India* company broke up the ship in the *Indies*; the owners brought their action against the company, and recovered damages, but they did not amount to a full satisfaction; and the obligee brought his bill to have his proportionable satisfaction out of the money recovered; but his bill was dismissed, and he left to recover, as well as he could, all at law, the court declaring, that they would never assist a bottomry bond, which carried an unreasonable interest. *Dandy v. Turner.*

Eq. Cas. Abr.
372. pl. 7.

Bill to be relieved against a bottomry bond, with condition, that if the ship S. bound to the *East Indies* should return to L. within thirty-six months, or if she did not return within thirty-six months, not being taken or lost by inevitable accidents within that time, then the money to be paid, &c. The ship was detained in *Port Surat* in *India* by an embargo by the Great Mogul, so that she could not sail from *Surat* till after the thirty-six months were elapsed, and

4 Vin. Abr. 281.
pl. 9.

and in her return home was taken by the *French*; but being after the thirty-six months, the bond was forfeited. But there being no fault in the master, and the voyage delayed by inevitable accident, *viz*, by the said embargo, the bill prayed to be relieved against the penalty of the bond, *Harcourt, C.* dismissed the bill, without costs, saying, he could not relieve against the express agreement of the parties, but if the defendant had insured this money upon the ship, the plaintiff should have the benefit of the insurance, upon allowing the defendant the charges of the insurance, if the plaintiff paid the money within three months. *Ingledew v Foster.*

4 Vin. Abr. 281.
pl. 10.

A. had insured for B. and plaintiffs, his assignees on the ship E. with the cargo, and the entry in the company's book of the contract was in short *items* called a label, which was thus :

“ At and from *Fort St. George* to *London*,
“ lost or not lost.”

And the policy was soon afterwards made out, and taken in the following words :

“ That the adventure was to commence
“ from the ship's departing from *Fort St.*
“ *George* to *London*.”

Before the insurance was made the ship was lost in *Bengal* river, whither she had been sent from *Fort St. George* to resit. The bill was brought to have the insurance money paid, being five hundred pounds, as a loss, &c. and founded the equity, that the policy was not made agreeable to the label, according to which the risque is to commence from the ship's coming

coming first to *Fort St. George*, and the going to *Bengal* to refit being a thing of necessity for performing the voyage, was no deviation, and the loss being during that time, was within the intent of the contract for the insuring.

Lord Chancellor *Hardwicke* said this was not proper to determine here. The first question is as to the agreement; the second, as to the breach; and doubted as to the agreement. The memorandum is not a printed form as to the material points, and the policy must be governed by that, if not varied. The words in the memorandum, or label, (*at Fort St. George*) include the stay of the ship there, and the policy follows the words; but adds thus, *viz.* "The beginning of the adventure to be from the ship's departing from *Fort St. George* for *London*," which excludes the risque whilst the ship stayed there; and this seems an inconsistency in the policy, first to describe the voyage at and from, &c. This seems a mistake in writing the policy, and is to be rectified, as in the case of articles or a settlement; and decreed the words to be added in the policy, for the adventure to commence at and from *Fort St. George*. *Motteux v. London Assurance*.

The defendant had lent money on a bottomry bond, but had no interest in the ship or cargo. The money lent was three hundred pounds, and he insured four hundred and fifty pounds on the ship. The plaintiff's bill was to have the policy delivered up, by reason the defendant was not concerned in point of interest, as to the ship or cargo. The court took it that the law is settled, that if a man has no interest, and insures, the insurance is void, although it be expressed in the policy interested or not interested; and the reason the law goes upon

2 Vern. 269,
270. Eq. Cal.
Abr. 371.

Insurances.

upon is, that these insurances are made for the encouragement of trade, and not that persons unconcerned in trade, nor interested in the ship, should profit by it; and where one would have benefit of the insurance, he must renounce all interest in the ship; and the reason why the law allows that a man having some interest in the ship or cargo, may insure more or five times as much, is, that a merchant cannot tell how much or how little his factor may have in readiness to lade on board his ship. And it was said, that the usual interest allowed on bottom-rhea was three pounds *per cent. per mensem*, and you may insure at six or seven *per cent.* for the voyage; so if this practice might be allowed, a man might be sure to gain thirty pounds or more *per cent. per cur.* Decree the policy of insurance to be delivered up to be cancelled.

In this case notice was taken in the policy, that it was to insure money on bottom-rhea; also, that in this case the ship survived the time limited in the bottom-rhea, and was lost within the time limited in the policy; so if insurance be good, defendant might be intitled to the money on the bond, and also on the policy. *Goddart v. Garret.*

2 Vern. 717.

Defendant lent the plaintiff two hundred and fifty pounds on a bottomry bond, and afterwards insured on the same ship; but the insurance was larger, as to the voyage, there being liberty to go to other ports and places, than what were contained in the condition of the bottomry bond. The ship being lost, the defendant recovered the money on the policy of insurance, and also put the bottomry bond in suit. The ship, though lost, had deviated from the voyage mentioned in the bond, in going to *Virgin Gardo* to buy salt. The plaintiff brought
his

his bill, pretending the defendant ought not to have a double satisfaction to recover both on the insurance, and also on the bond, he having insured only in respect of the money he had lent on bottomry, and had no other interest in the ship or cargo, and therefore the plaintiff would have had the benefit of the insurance, paying the præmium; *sed non allocatur*; the defendant having paid the præmium, was intitled to the benefit of the policy, and run the risque whether the ship was lost or not; and the insurers might as well pretend to have aid of the bottomry bond, and to discount the money recovered thereon, as the plaintiff to have the money recovered on the policy to ease the bottomry bond. *Harman v. Vanbatton.*



ACTIONS.

Carter against
Glover at Guild-
hall. 28 June,
1744. Barnard
K. B. 304. S.P.

A MADE a policy, and declared under his hand, on the back, that the insurance was made for and on the account of B; and afterwards A brought an action on the policy; and, though the declaration of B's interest appeared at the trial, *Lee*, chief justice, was of opinion, that A, notwithstanding, might maintain the action and verdict for the plaintiff.

Mol. B. 2. c. 7.
sect. 10.

An insurance made in a foreign country, may be sued in *England*, if the assurers come here.

Gen. Treat. of
Trade. 78.

If a man in a foreign country insures a ship from any place there to *London*, and the ship is lost, the assurer, if he comes into *England*, shall answer by our law here; for the promise is transitory, and not fixed to the place where made: and so it was resolved, where a person abroad, in consideration of ten pounds, had insured, that, if the *English* merchant's ship did not come safe to *London*, he would pay one hundred pounds: afterwards the ship was robbed on the sea; and, in an action brought for the one hundred pounds, the merchant had judgment, though the subscription was out of the realm.

Show. 156.

In *indebitatus assumpsit*, by B, for five pounds received to the plaintiff's use, and *non assumpsit* pleaded; the case was, that A took a policy of insurance upon account, for five pounds premium, in the name of B; and A paid the
said

paid premium to J. S. and A: and then no goods on board; and so the policy was void; and so the money to be returned by the custom of merchants. It was insisted, that the action ought to have been in A's name, for the money was his; and if the policy was good, it would have been to his advantage; and it could no wise be said, to be received to B's use, it never being his money. Besides, here may be a great fraud upon all insurers in this, that an insurance may be made in another's name; and, if a loss happen, then the insurer shall pay; for that some *cestyque* trust had goods on board: but, if the ship arrives, then the nominal trustee shall bring an *indebitatus assumpsit* for the premium, as having no goods on board.

To all which, *Holt*, chief justice, answered, That the policy being in B's name, the premium was paid in his name, and as his money; and he must bring the action upon a loss; and so, upon a voidance of the policy to recover back the premium: and as to the inconveniences, it would be the same, whosoever was to bring the action; and therefore the insurers ought with caution to look to that before hand.

Martin v. Sitwell.

B having the command of a merchant ship, and likewise a share in her as being an owner, 1730, desired A by letter to get two hundred pounds insured on her. An insurance was made in the name of A, the agent, by B's direction; the insurers, J. S. and F. S. knowing nothing of B. In the voyage, the ship was lost, and B, the captain, cast away. M, the administratrix of B, gave J. S. and F. S. notice of the loss and the trust, and required payment to her only. But A, under a pretence that B was indebted to him, procured the insurers to give him credit for the sum in an

Barnard Chan-
Rep. 319.

U account

account which they afterwards made up with him ; and then the balance of that account was carried into a new account ; and this second account was afterwards settled between them. Upon a bill by M. to be relieved, it was decreed, that the insurers pay her the money, and A to pay the costs of suit, deducting thereout the charges he had been at in obtaining the policy. *Fell, v. Lutwidge.*

Posslethw. Dict.
Tr. and Com.
148.

This was an action upon the case brought upon a policy of insurance, in which the plaintiff declared as follows :

London.

Gyles Rooke complains of *John Thurmond* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, for that were as the said *Gyles Rooke*, on the fifth day of *October*, in the year of our Lord 1741, at *London*, aforesaid, (to wit, in the parish of *Saint Mary le Bow*, &c. according to the custom of merchants from time immemorial used and approved of, caused to be made a certain writing, or policy of assurance, purporting thereby, and containing therein, that one *Caleb Smith*, as well in his own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain, in part, or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from *South-Carolina* to *Cowes*, upon the body, tackle, apparel, ordinance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the *Polly*, whereof was master, under God, for that then present voyage, Captain *William Henry*, or whosoever should go for master in the said ship, or by whatsoever other name or names the same ship,

ship or the master thereof, was or should be named or called, beginning the adventure upon the said ship, &c. from and immediately following her first arrival there; and so should continue and endure until the said ship, with the said tackle, apparel, &c. should be arrived at Cowes, and there had moored at anchor twenty-four hours in good safety, and it should be lawful for the said ship in the voyage to proceed and sail to, and touch and stay at any port or places whatsoever, without prejudice to that insurance. The said ship, &c. for so much as concerned the assureds, was and should be valued at interest or no interest, free from average, and without benefit of salvage, without farther account to be given by the assureds for the same, touching the adventures and perils which the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettezons, letters of mart and countermart, surprizals, takings at sea, arrests, restraints and detainments of all kings, princes, and people, of what nation, condition, or quality soever, baratry of the master and mariners, and of all other perils, losses and misfortunes that had or should come to the hurt, detriment, or damage of the said ship, &c. or any part thereof; and in case of loss or misfortune, it should be lawful to the assureds, their servants, factors, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said ship, &c. or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured. And it was agreed by them the assurers, that the said writing, or policy of assurance, should be of as much force and effect, as

Insurances.

the surest writing, or policy of assurance, heretofore made in *Lombard-street*, or on the *Royal Exchange*, or elsewhere in *London*. And so they the assurers were contented, and did thereby promise and bind themselves, each for his own part, their heirs, executors and goods, to the assureds, their executors, administrators, and assigns, for the true performance of the premisses, confessing themselves paid the consideration due unto them for that assurance by the assured, at and after the rate of 5 *l.* 15 *s.* *per cent.* and in case of loss, (which God forbid) the assured to abate two pounds *per cent.* And the said *Giles* avers, that the said policy of assurance was so made as aforesaid in the name of the said *Caleb Smith*, on the account and risque of the said *Giles*, and that the said *Giles*, at the time of making thereof was solely interested therein. Of all which premisses the said *John* afterwards, to wit, on the day and year aforesaid, at *London*, &c. had notice, and thereupon afterwards, to wit, on the day and year aforesaid, at *London* aforesaid, and in the parish and ward aforesaid, in consideration that the said *Giles*, at the special instance and request of the said *John*, had then and there paid to the said *John* the sum of five pounds fifteen shillings as a premium and reward for the insurance of one hundred pounds, of and upon the premisses in the said policy mentioned, and had undertaken, and faithfully promised to perform and fulfil every thing in the said policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled; he the said *John* undertook, and then and there faithfully promised the said *Giles*, that he would become an assurer to the said *Giles* for the said one hundred pounds, of and upon the premisses in the said policy mentioned; and that he would perform and fulfil every thing in the
said

saïd policy contained on his part and behalf, as such assurer, as to the saïd one hundred pounds to be performed and fulfilled, and then and there subscribed the saïd policy, as such assurer for the saïd one hundred pounds; and the saïd *Giles* in fact saith, that before the making of the saïd policy, viz. on the first day of *May*, in the year of our Lord 1741, the saïd ship, or vessel, with all her apparel and other furniture, first arrived at *South Carolina* aforesaid, and afterwards, to wit, on the 12th day of *July*, in the year of our Lord 1741, aforesaid, the saïd ship, or vessel, with all her apparel and other furniture, departed and sailed from *South Carolina* aforesaid towards *Cowes* aforesaid, and proceeded on her saïd voyage to the port of *Cowes* aforesaid, and afterwards, to wit, on the 18th day of *July*, in the year last aforesaid, the saïd ship, or vessel, with all her tackle, boat, and other furniture, so proceeding in her saïd voyage towards the port of *Cowes* aforesaid, before her arrival at the port of *Cowes* aforesaid on the high seas was with force and arms in an hostile manner, attacked, conquered, and taken as a prize by certain enemies of our lord the king and his crown of *England*, to wit, by certain *Spaniards* and subjects of the king of *Spain*; and the saïd ship, or vessel, with all her tackle and other her furniture, were thereby then and there wholly lost, and never did arrive at the port of *Cowes* aforesaid; of all which saïd premises the saïd *John* afterwards, to wit, on the first day of *Dec.* in the year of our Lord 1741, aforesaid, at *London* aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested by the saïd *Giles* to pay him ninety-eight pounds, parcel of the saïd one hundred pounds, two pounds residue of the saïd one hundred pounds being to be abated to the saïd *John* on account of the loss

U 3

aforesaid,

Insurances.

aforesaid, which ninety-eight pounds the said *John* ought to have paid the said *Giles*, according to his said promise and undertaking; yet the said *John*, not regarding his said promise and undertaking, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *Giles* in this particular, hath not yet paid the said sum of money, or any part thereof, to the said *Giles* (although so to do, the said *John* by the said *Giles* was requested afterwards on the day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid) but he to pay the same to him hath hitherto wholly refused and still refuses.

There was another count for five pounds fifteen shillings for money had and received by the defendant for the use of the plaintiff. Damages laid, one hundred pounds.

The defendant pleaded the general issue, *non assumpsit*, and issue was thereon joined.

Upon this case it was clearly taken at the trial before *Lee*, C. J. without any objection or question made upon it, that the plaintiff was well intitled to maintain this action upon the policy of insurance made in the name of *Caleb Smith*, who was the policy-broker employed to procure the insurance, he having by endorsement upon the policy acknowledged and declared, that the policy was made in his name upon the account and for the sole risque and benefit of the plaintiff, and *Smith* was allowed without any objection to prove the underwriting by the defendant and his own indorsement.

In this case the defence insisted on for the defendant underwriting this policy was, that the plaintiff had been informed by a letter wrote from *Carolina*, by a ship called the *Collet*, to
one

one Mr. *Crockatt*, that the *Polly*, the ship insured, had sailed ten days, or a fortnight, from *Carolina* before the ship *Collet*, and that the ship *Collet* had arrived in *England* about seven days before the insurance was made, and the plaintiff had not informed the defendant of this, which was insisted on to be a fraud in the plaintiff sufficient to discharge the defendant of this insurance, it being, as was insisted, a settled and established rule, that on making an insurance, all material circumstances relating to the adventure ought to be disclosed to the insurer for him to judge upon; and the chief justice allowed this rule, and declared his opinion, that the concealment insisted on was a sufficient circumstance to discharge the defendant from the policy; for he said, that these contracts are made upon a mutual faith and credit, and that to conceal such circumstances which make any difference in the adventure is fraudulent for the insurer ought to have the advantage of judgment upon them, and that where there is such concealment, the insurance ought not to bind. But the defendant not being able to make out this fact to the satisfaction of the jury, the plaintiff had a verdict.

N. B. In this case the insurance was a re-insurance, and it was said by several policy-brokers, that where policies are made interest or no interest, it is generally in such cases of re-insurances. *Rooke v. Thurmond.*

The plaintiff caused himself to be insured on the *Prince Frederick*, from *Vera Cruz* to *London*, interest or no interest, free of average, and without benefit of salvage.

The ship was afterwards seized by order of the viceroy of *Mexico* and the *Spaniards* turned her into a man of war, called her the *St. Philip*, and sent her as commodore with a squadron of

Insurances.

Spanish men of war to the *Havanna*, they having first taken out the *South-Sea* company's arms, and made several alterations in her; and there was a war between *England* and *Spain*, and *Gibraltar* was actually besieged by the *Spaniards*.

The defendants proved the signing of preliminary articles of peace before the seizure of the ship, and therefore insisted that this seizure did not alter the property, and consequently the defendants were not liable; for if the property was not altered, this insurance made by the plaintiff, who had no interest, cannot bind, as nothing comes within the policy but a total loss, and though there be these general words in the policy, *restraint or detainment by princes*, *Hardwicke*, chief justice, declared,

First, That a war might begin without an actual declaration by proclamation, as in this case, by laying siege to *Gibraltar*, a garrison town, though there might be depredations at sea between princes in amity, for which letters of marque, &c. might be granted.

Secondly, As a war may begin by hostilities only, so it may end by cessation of arms; and these preliminary articles being signed before the seizure of the ship, and there being a cessation of arms, he thought the ship being taken afterwards not to be a taking by enemies, unless the jury took the caption to begin from the time the arms were seized, which was before the articles, and that was left to the jury.

Thirdly, Supposing the ship not taken by enemies, *Quære*, whether this detention for near the space of a year was, in those sorts of policies, *viz.* interest or no interest, a detention within the policy, or whether in such policies the insurers are ever liable but in case of a total loss; and if so, this ship being afterwards restored,

restored, then he directed the jury to find for the defendant. This, he said, depended on the custom or usage among merchants, and the jury gave a verdict for the defendant, but did not declare upon what point; but they must be of opinion she was not seized in time of war, and that therefore the policy being interest or no interest, the assurers were not liable, because there was no total loss.

In this case the insurance was made by one *Deflores* for the plaintiff, and *Deflores* wrote his name on the policy, and before the trial it was filled up with these words, *I made this for the benefit of Spencer*, and no date; and it was admitted the action was well brought by *Cestui que Trust. Spencer and Franco*.



I N J U N C T I O N.

Pofflethw. Dict.
of Tra. and
Com. p. 147.

THE plaintiff being sued at law upon a policy of insurance of a ship, and against the baratry of the master, which was assigned in the declaration, brought his bill in chancery to be relieved, and for an injunction; charging that one *Matthews*, the master, and also owner of the ship, had, before the voyage, entered into a bottomry bond to the defendant for two hundred pounds, and that after, by bill of sale, he assigned over his interest in the ship to the defendant, as a security for this two hundred pounds, and insisted, that *Matthews* was nevertheless in equity to be considered as owner of the ship, though in law the ownership and property would be looked upon to be in the defendant, and insisted, that the owner of a ship could not, either in law or equity, be guilty of a baratry concerning the ship, and therefore prayed an injunction, and that the policy might be delivered up.

The voyage insured was from *London* to *Marseilles*, and from thence to some port in *Holland*. The case was, that the master sailed with the ship to *Marseilles*, and then, instead of pursuing the voyage, sailed to the *West Indies*, and there sold the ship, and died insolvent. These matters being confessed by the answer, an injunction was moved for on the principle, that a mortgagor is to be considered in equity as owner

owner of the thing mortgaged, and that *Matthews* the master being owner, could not be guilty of baratry. To shew which, a case was cited of *Stamma* and *Brown*, where it was determined the preceding term in the King's Bench. Lord *Hardwicke*, chancellor. Baratry is an act of wrong done by the master against the ship and goods; and this being in the case of a ship, the question will be, Who is to be considered as the owner? There are several cases that might be put, where baratry may be assigned as the breach of an assurance, and baratry or not, is a question properly determinable at law; but here it is not so, for the courts of law will not consider a mortgagor as having any right or interest in the thing mortgaged; and there are many cases, where a man may come into a court of equity for relief, in respect of a part only of his case. It might indeed be considered at law, whether what the master hath done, supposing owner or not, was not a breach of the contract, as master of the ship, and so a baratry, and this may be considered likewise in this court. But at law a defendant cannot read part of the plaintiff's answer to a bill brought against him here; the whole answer must be read, which hath been often a reason for this court interposing by injunction upon a plaint at law; and considering the mixed nature of this case, I think an injunction ought to be granted. Ordered accordingly. *Lewen* versus *Swaffo*.

C A S E.

Posslethw. Dict
of Tra. and
Com. p. 147.

ONE *Mary Stroad* having an interest in some houses in *London*, for the remainder of a term of which above five years were to come; insured the same from fire, by a policy of insurance entered into by the *Hand-in-hand* company for insurance of houses from fire; which insurance was made for a term of seven years; and a premium paid accordingly. It happened that, after the end of the five years, and before the end of the seven years, the houses were burned down; after which *Mary Stroad* assigned the policy to the *Sadlers* company, who were entitled to the houses after the determination of the term of *Mary Stroad*. This bill was brought by the plaintiff against the insurance company, to have this insurance made good; insisting thereon by reason, that a premium was paid to the company for the whole seven years; within which space of time this accident hath happened. And, as this insurance is expressly to *Mary Stroad*, her executors, administrators, and assigns, that the plaintiffs, as her assigns, are well entitled to have the policy made good.

It was urged, that this insurance company, being an amicable society, who insure each other with a joint stock; and the plaintiffs being, as assigns of *Mary Stroad*, members of the society, was the reason for seeking relief by bill

bill in equity, and not pursuing a remedy at law; in regard that no action would lie; for that the plaintiffs, by standing in the place of *Mary Stroad*, might be said to be part of the society, and therefore could not prosecute an action against themselves.

For the defendant it was insisted, that the intent of these policies is only to insure some certain interest in the party insured from loss or damages; and that, when such interest ceases, the insurance is at an end. It was also insisted, to be an antient rule of the society, that no person should be permitted to insure for a less term than seven years; and that, subsequent to the plaintiff's insurance, an order of the company was made, reciting, that, whereas all insurances, by the rules of the company, were to cease with the interest of the assured, yet that the insurers might assign their policies. This order was insisted upon as evidence, to shew, that, by the rules of the company, they are answerable for no loss or damage happening by fire to the houses insured, after the interest of the assured is determined.

In this company, as in all other insurance companies, there is a rule that the policy should be of no effect, if assigned, unless brought to be allowed by the company within such a time; but it was admitted, that the plaintiffs had tendered the assignment to the company, within the time for such allowance, but they had refused it.

In regard to the order made, that all assurances were to cease with the interest of the assured, Lord Chancellor *Hardwicke* said, the assured were to be considered in a double capacity, as members of the company, and as persons contracting with them; and that, if the
case

case depended upon this order, he should not think the company, in their general capacity, could vary or alter any contract made by them to their individual members: but that he was of opinion, from the nature of all insurances, that the insurance must cease with the interest of the assured; for it is only to save from damage in the thing insured; and where it is to insure damages from fire, how can the insurers enter upon the premisses to rebuild or repair when the estate of the assured is determined! An insurance implies an interest in the insured in the thing insured. If it were otherwise, many ill consequences might follow; men might insure houses of strangers, and, in hopes of getting the money insured, set the houses on fire.

And though, in cases of commerce, policies of insurance are allowed to be made, interest or no interest, yet it was long before this could prevail, and was allowed only in respect that goods might be insured in a commerce which is prohibited in a foreign country, and to prevent (in regard to the advantage of the trade to this kingdom) a discovery of the nature of the goods, and thereby laying open the owner in such foreign country to the penalty for trading in such goods: that, although such policies are now allowed, yet he remembers them much questioned and called fraudulent; but no such reason holds in the cases of insurances of houses from fire; and in which insurances all suppose an interest in the assured.

In the case of *Lynch* and *Dalzel*, which was before the House of Lords, in *March*, 1729, one *Ireland*, being entitled to the remainder of a long term of years in a house at *Gravesend*, caused the same to be insured from fire in the Sun-

Sun-fire office; and the insurance was to him, his heirs, executors, administrators, and assigns.

Ireland dying, his son and executor agreed with the appellant to sell and assign to him this house, together with the benefit of the policy for the insurance of the house. The lease of the house was accordingly assigned, but, there being no assignment of the policy prepared, that was only delivered up, and, in fact, not assigned; but *Ireland* promised to execute an assignment of it to the appellant any time after.

But before the policy was assigned, the house was burned down; and a bill was brought in this court by the appellant to compel the company to pay the money insured by the policy; and the bill was dismissed by Lord Chancellor *King*, and his order affirmed by the lords.

Lord chancellor said, that he was council in the cause; and, that the reasons upon which Lord Chancellor *King* dismissed the bill, appear in the reasons mentioned in the respondent's case. That these policies are not insurances of the things themselves mentioned to be insured, for no body can warrant against accidents, nor do such insurance attach on the thing, or in any manner go with it, as incident thereto, by any conveyance or assignment of the thing insured: but the insurances are only special agreements with the persons insuring against such loss and damages as they shall sustain; and the party insuring must have a property at the time of the loss, or he can sustain no loss, and consequently be entitled to no satisfaction. Lord Chancellor observed, that this case was rather stronger than the present, but dismissed the bill only without costs. *Sadlers Company v. Badock.*

A bill

Postlethw. Dict.
of Tr. and Com.
148.

A bill in Chancery was brought for relief against a verdict and judgment given in the court of Common Pleas upon a policy of insurance; and to have an injunction to stay execution upon the judgment. The case appeared to be, that the ship insured was taken by a *Spanish* privateer, and that after it had been carried *within the enemy's garrison*, it was retaken by an *English* privateer.

* 14 Geo. 2. c.
38.

It was argued, for the now plaintiff, who was the defendant at law, that, although by the law of nations, the first capture of a ship, and its being *within the enemy's garrison*, had absolutely divested the right of the original proprietors, yet that now, by the * statute made in the year 1740, it is otherwise; being thereby provided, that, if the ships of our *English* merchants should be taken by an enemy, and afterwards retaken by any of his majesty's subjects, that the right of the original proprietors in such ships should be reserved on their paying one moiety of the value of such ships to the recaptors for re-salvage.

Upon this it was argued, that the verdict and judgment are unjust, in regard that the whole insurance money is given in damages when it appears, that the plaintiff at law, upon payment of one half of the value of the ship, might recover it back; and therefore, that one half of the insurance money ought only to have been given in damages; upon which the injunction prayed by the bill was moved for.

On the other side, it was insisted, that this was a right verdict, and that the insured were not to be put to the delay, expence, and trouble of ascertaining the value of the ship, in order to recover back, upon payment of one moiety of the value to the captors. That for recovery

recovery thereof, the insurers might stand in the place of the insured, and make use of their names, which had been offered: that they did not pretend to oppose so much of the bill as sought this, but insisted that this could be no ground for granting the injunction prayed: that this point had been debated before Lord Chief Justice *Willes*, upon trial of the issue at *nisi prius*, who had declared his opinion, that this right of salvage ought not to preclude the insured from their recovery upon the insurance, till the salvage should be settled: that the defendants, the insurers, would be entitled to stand in the place of the insured, to make what advantage they could of the salvage.

Lord *Hardwick*, chancellor, being of the same opinion, refused to grant the injunction; and said, that the damage in recovering the salvage, is as much a part of the insurance as the ship itself. *Prendle v. Hartley*.

The plaintiffs were foreigners and copartners, who fitted out a ship from *Ostend* to *China*, and back again; and the defendant, *D'Gonieghe*, their agent, insured the ship and cargo here in *England* by the other defendants, and took the policy in his own name. The ship proceeded on her voyage, and called in at *Bencolin*, where the governor seized her as an interloper, and disposed of her and the cargo. Upon which the plaintiffs brought this bill, setting forth, that the policy was taken in the name of *D'Gonieghe*, their trustee; and, that he refuses to let them sue the other defendants in his name: that the facts happened abroad, and that their witnesses, who could prove them, were beyond seas; and therefore they pray a discovery and relief.

And the defendants demurred to the relief, and their council said, that the same demurrer

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Moseley 83.
Postlethw. Dict.
of Tr. and Com.
149.

was allowed by his lordship on the fifteenth of January, 1727, in the case of *D'Silva v. Wall and others*; where the policy was on a *Portuguese* ship; and it was suggested in the bill, that the witnesses were *Portuguese*, and lived abroad; and that the expences of bringing them over on a trial would be more than the cause would bear; and that their trustee would not let them bring an action in his name; yet his lordship was of opinion, that they must recover at law, as well as they could, and had no title to be relieved here: that it was the common suggestion in every bill, that the witnesses were beyond seas; that policies were generally taken in the name of a trustee; and that, if he refused to let the action be brought in his name, a bill might be filed against him to compel him to it.

The council for the plaintiffs insisted, That if they had filed their bill against the trustee only, he would have demurred because they had not made the *London Assurance* parties, who might have satisfied them; and that they had brought a proper bill; and that they ought either to have the liberty to use the name of the defendant, their trustee, or to have a remedy against the other defendants: that the demurrer ought to be over-ruled, because possibly the court might think proper to relieve them at the hearing: but if the demurrer should be allowed, they would be out of court, and so lose even the relief against their trustee, which they were plainly entitled to.

Lord chancellor. At this rate, all policies of insurance would be tried in this court; for they are generally taken in the name of a trustee, and are made on ships going abroad; and the witnesses live abroad. Let the demurrers be respited till the defendant, *D'Goniegh*,
has

has put in his answer. And, on the twenty-first of November, 1729, the demurrer was allowed.

Dbegetoft et al', versus *the London Assurance, et al'*.

The plaintiffs dealt in tobacco from *Virginia* to *Scotland*, and insured on that voyage. The policy was taken out in the name of the defendant, *Johnson*, and *Chambers* and others underwrit it. The ship came into port, but the tobacco was greatly damaged, so that the insurers waived all title to it, and left it for the benefit of the insurers, and transferred it to them; and it was afterwards sold to the best advantage; and they were damaged in the sum of one thousand, three hundred, and fifty-three pounds; upon which the plaintiffs file their bill, setting forth all this matter, and that the policy was taken in the name of a trustee, who refuses to let them sue in his name at law to recover damages, and pray a discovery and relief.

The defendants, the insurers, by their answer admit the policy, and make a full discovery; but demur to the relief, because the plaintiff has a proper remedy at law.

It cannot be controverted, but that an action lies on a policy; and the only colour the plaintiff has for coming into this court, is, that the policy is taken in the name of a trustee; but if this was sufficient to translate the jurisdiction, then all actions on policies would be turned into bills; the agents of foreign merchants always take them in their own name; and if this expedient should prevail, though the parties live in *London*, they would take the same method. But if the trustee really refuses his name, this indeed is a foundation for the court to compel him; but not to decree against the debtor; his refusal cannot alter the nature of

the action against him, he has a right to have the witnesses examined *viva voce* at a trial, where their evidence can be more thoroughly sifted, and considered by a judge and jury, than on a commission. It is the common suggestion in every bill, that the witnesses are dead, or beyond the seas, out of the jurisdiction of the courts of law; but here it appears, by the plaintiff's own bill, that the loss was in *Scotland*, and that their witnesses live there, though this, on a demurrer, has been adjudged not to be a sufficient cause to have relief in a court of equity, where there is a remedy at law; but that it only entitles the plaintiff to have a discovery on the oath of the defendant, and a commission in aid of his action at law.

And the same demurrer was allowed by your lordship in the case of *D'Silva*, where the ship insured was *Portuguese*, and bound on a foreign voyage; and the suggestions were, that the policy was taken in the name of a trustee, and that the witnesses were sea-faring people, and beyond the seas.

This is a proper bill for relief, and the demurrer is not good; the bill is brought by part-owners, to have satisfaction on a policy against *Chambers*, and other defendants, as under-writers. and against *Johnson*, their trustee, on a ship bound from *Virginia* to the river *Dunbar*, in *Scotland*. In the voyage the ship and cargo were greatly damaged; and when the ship arrived at *Dunbar*, they proceeded to sell her, under proper protests, by a decree of the court of admiralty, for the benefit of the insurers, renouncing all right as to themselves. We charge that the trustee refuses his name; that the transaction was in *Scotland*, and that it was a foreign voyage from *Virginia* thither; and that, consequently, the evidence must arise abroad.

abroad. It is proper, for a *cestuy que* trust to come into a court of equity, on the refusal of his trustee, to have liberty to sue in his name. Suppose a bond is assigned, what is more common than to bring a bill against the obligor, and obligee, for a satisfaction, and the plaintiff is never sent back to recover the payment at law, though the defendant, in that case might demur, for the same reasons the defendant here has ; but they allow we are proper to pray relief against *Johnson* ; but he might have demurred to our bill, if we had not made the other defendants parties, because they might have made us a satisfaction ; but if this demurrer is allowed, the bill will be out of court as to them ; and then *Johnson*, at the hearing, may object for want of parties. And as this matter arises in *Scotland*, and our evidence is there, it is the same thing as if they were beyond the seas, because the process of our court does not bind them ; we design to examine the custom-house officers in *Scotland* ; and if we should serve them with a *subpœna* in *Scotland*, since they are not bound to obey it, sure we have a right to a commission to examine them in *Scotland*. And the objection, that the examination of witnesses, *viva voce*, is greatly preferable to an examination by commissioners, is of no weight, because this court, if they are not satisfied with the evidence, may direct an issue.

Lord chancellor. If I should give way to this attempt, no action would ever be brought on a policy ; and a bill might as well be brought for payment of a bond, on suggestion that the witnesses were abroad, or dead ; besides, these are transactions that in their own nature must arise at sea, and out of the jurisdiction of the courts ; and they that will take a policy in this

kingdom, must be subject to our form of trials; and who would insure if they were liable to bills? The jury will take the account, and consider of salvage, and all proper allowances, and do it in all such trials. Why can't the plaintiff bring his witnesses from *Scotland*, as well as is done every day from *Northumberland*; which is the next county to it? The commissioners will give their officers leave to come to the trial.

His lordship was going to allow the demurrer; but at the instance of the attorney-general, he made the same order he had done in the above case of *Dbegetoft* and the *London Assurance*, That the demurrer should stand over till the trustee had put in his answer. *Fall & al', v. Chambers & al'*.



Insurances from Fire.

INSURANCES from fire are introduced into several countries, though not every where under that denomination. At *Ham-*
burgh there is a fire *cassa* of an old standing, wherein the principal houses are insured at the value of fifteen thousand marks (which is about one thousand pounds sterling) to be paid in case of their being burnt, the insured paying yearly one fourth of a mark for every thousand marks for expences. Every one concerned in this office, or *fire cassa*, contributes to a loss in proportion to what his own house stands insured for; but no house is valued at more than fifteen thousand marks, though it may have cost ten times that sum in building.

Mag. Insur. p.
31. See Law of
Bills, &c. p. 369.
sect. 15. par. 2.

We can account for this limitation no otherwise than by supposing the intention of the legislature to have been to curb by this valuation the pride of the citizens, and hinder them from being too magnificent in their buildings: a very wise maxim certainly in a trading city.

In *London*, insurances from fire are obtainable at such easy rates, that there are few mer-
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Insurances.

chants but chuse to be insured for their own quiet. Besides, this precaution adds to their credit both at home and abroad, when it is known, that the great capitals lying in their houses and warehouses, are thus secured from the flames.

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Insurances upon Lives.

MEN S lives with good reason are, and may be, insured, to secure a creditor the reimbursement of a sum advanced to his debtor for purchasing a post or place, out of the income of which he may have a sufficiency, besides his maintainance, and expences, and interest, and præmium, to pay off yearly a part of the capital. However, the lender ought not to insure the life of the borrower without having his consent. * In some places insurances are not permitted on the lives of persons at the head of government ; but in *London* people take the liberty to make insurances on any one's life, without exception ; and the insurers seldom inquire much if they are good or bad reasons for such an insurance, but only what the person's age is, and whether he be of a good constitution. The common præmium on a good life, from twenty to fifty years of age, is five *per cent.* and from fifty to sixty years old, six *per cent. per annum.* But these præmiums are higher than any computation founded on observations concerning the probability of human life will warrant. People ought by all means to be prevented from getting insurances done with sinister views, especially that inhuman one of committing murder to gain the sum insured, an instance of which villainy happened a few years since in *London*. An apothecary, having got his wife's life insured, soon af-
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Insurances on lives allowable. 1 vol. Magen's Insurances. p. 32.

* At Genoa no insurances can be made, without leave of the senate, on the life of an high priest, emperor, king, cardinal, duke, prince, bishop, or other lord, person ecclesiastical or secular, in office. Civil Stat. of the Republic of Genoa.

ter killed her. Underwriters should therefore inform themselves of the motives why an insurance is required, and not to be contented with obscure, plausible, or fictitious reasons. It is indeed true, that the insurers are not obliged to pay to a murderer convict, as happened in the case of the aforementioned apothecary; yet this does not restore the life sacrificed. A great part of the insurance done on lives in *London* are for or by people who have certain expectations in reversion after the death of some friend or relation, whose possessions they have a mind in part to anticipate by this means: but such insurances seem not easily to be justified, as they frustrate the intentions of the bequeather, and frequently upset a good design; and a fine estate may be soon anticipated by this irregular method. All ordinances of insurance allow it to be made upon the lives of captives in slavery, but to subsist no longer than the bondage does, or till the person be redeemed.

Law of bills, &c.
p. 205. pl. 5.

In *June*, 1749 the defendant had applied to an office-keeper, or broker, to insure sixteen hundred pounds for one year, at five *per cent.* on the life of one *Poulton*, from whom the defendant had agreed to purchase an estate, whereof *Poulton* had the reversion in fee, and also an intervening estate for his own life. The broker answered, that the course of the office was to produce the person whose life was to be insured, in order to be inspected by the insurers, or underwriters; to which the defendant replied, that the person lived at a great distance in the country, and that it was very inconvenient for him to come to *London*: and on the broker's asking the defendant, whether he was a good life, the defendant answered he was, and added, that he would leave a note of
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his name and place of abode, which he accordingly did. On this declaration of the defendant, the broker procured sixteen persons to underwrite a policy of insurance for sixteen hundred pounds on *Poulton's* life, at the rate of interest, and for the time before mentioned; and about six months afterwards *Poulton* died. In 1750 the defendant brought an action on the policy, in the court of Common Pleas, and had a verdict for him, in consequence of which the plaintiff, who was one of the underwriters, paid him ninety-eight pounds, as for his part of the insurance money; but in 1751 brought his bill in the court of Chancery, suggesting fraud and imposition. The defendant admitted in his answer, that *Poulton* was a drunken fellow: upon which the lord chancellor at the hearing, directed an action at law to be brought, which was done accordingly, and there was a verdict for the plaintiff; but the jury acquitted the defendant of fraud; and the cause now coming on before the lord chancellor for further directions, the question was, Whether the defendant should pay interest for the ninety-eight pounds which he received, and also the costs in equity; and to prove that he ought not to pay interest, Lord *Raym.* 398 was cited, where Chief Justice *Holt* said, interest is never given by the jury in such a case, (this was for money won upon a wager) and to shew he ought not to pay costs, 3 *Wm's.* 205 was cited, where the lord chancellor declared, that a man ought not to be punished for defending his right.

Lord Chancellor. This cause comes now before me, after a verdict for the plaintiff, and another verdict for the defendant at law, and my determination thereon shall not be grounded on any imputation on Sir *Crisp Gascoigne*, who

who is as worthy a gentleman, and in as full credit as any merchant in *London*. The defendant brought an action at law, in which he prevailed, which made it necessary for the plaintiff to apply to this court, the jurisdiction whereof is concurrent and concomitant with, and auxiliary to that of the common law in cases of fraud; to the end that all persons may have the necessary measures of justice, according to the various modifications of their rights. I have constantly attended at *Guildhall* during the last war, and was concerned in various cases of this nature; and by all the foreign books, as well as our own, the learning concerning insurances, as well of lives as of ships, was thoroughly settled and established. Every party concerned in an insurance must communicate every circumstance he knows, in order to ascertain the præmium, which otherwise will be affected, and the policy void. Thus, if a man comes to insure a ship, and says she was such a day safe in such a place, he asserts it at his peril, though he does it *inscianter*; for when you come to insure, the person you apply to supposes you to be a man of prudence and caution, and that every thing you say is true; because otherwise men should be put to vain, idle, and expensive pursuits, and, perhaps, to no purpose. The reason the defendant prevailed at law was, that his declaration did not appear on the face of the instrument of assurance. The plaintiff by the bill suggested a fraud, and wanted a discovery in order to defend himself, and was therefore intitled to come here, but at his peril, if he came wantonly; and that he had a right to apply to a court of equity, is evident from the verdict, which he obtained on a full discovery of all the circumstances of the case. As to the interest, I think

I think it would be given at common law, where a man sues for, recovers, and receives a gross sum of money unduly; and I should not sit here, were I to suffer a man to receive a sum of money, and keep it, without making any satisfaction for the detention of it. What would the merchants of *Lombard-street* think of such proceedings? It is objected, there was a verdict for, and another against the defendant, and that therefore the matter is in *equilibrio*, but the verdict for him was the cause of the suit here, where he came to defend himself. The distinction with respect to costs is where one of the parties is to blame, in which case the court may exercise a discretion. Decreed interest on the ninety-eight pounds, together with costs, in the court of chancery, *April 15, 1758*, between *Cleeve* and *Sir Crisp Gascoigne*.

Whereas it hath been found by experience to be of benefit and advantage for persons having offices, employments, estates, or other incomes, determinable on the life or lives of themselves or others, to make insurances on the life or lives upon which such offices, employments, estates, or incomes are determinable; his majesty hath been graciously pleased to grant to the corporation of the *London Assurance* full power and authority to assure on the life or lives of any person or persons, which they are ready to do on reasonable terms.

Ibid. 380. See
2 Mag. Insur.
372.

The plaintiff insured, interest or no interest, on any ship he should come in from *Virginia* to *London*, beginning the adventure on his embarking on board such a ship; the money to be paid, though his person should escape, or the ship be retaken.

3 Stra. 1248.

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Insurances.

He embarked on the *Speedwell*, but she springing a leak at sea, he went on board the *Friendship*, and arrived safe at *London*; but the *Speedwell* was taken after he left her. And now in an action against the underwriter, he was held liable; for the insurance is on the ship the plaintiff set out in; and had that got safe home, and the other been lost, the plaintiff could not have recovered upon the foot of having removed his person into that ship in the middle of the voyage. *Dick v. Barrel.*



Owners

Owners and Masters of Ships.

I. **T**HE Great CREATOR having finished his mighty work, and given man that dominion which he now enjoys, as well over the fish in the sea as the beasts in the field, he was not forgetful of bestowing on him those things which were necessary for the government and support of the same, creating at the same time trees which grow as it were spontaneously into vessels and canoes, which wanted nothing but launching forth to render them useful for his accommodation, which he afterwards, by his divine genius, inspired by that mighty one, hath so compleated and equipped, as to render it the most beautiful and stupendous creature (not improperly so called) that the whole world can produce ; which, being not retarded by winds, or other contingent accidents, submits itself to plow the unknown paths of that vast element, to brave all encounters of waves and rocks ; to fathom and survey the vast immensities of the very earth itself ; to people, cultivate, and civilize uninhabited and barbarous regions ; and to proclaim to the universe, the wonders of the architect, the skill of the pilot, and, above all, the benefits of commerce ; so that it is no wonder, at this day, to find nations contending who should surpass each

each other in the art of navigation, and to monopolize, if possible, the very commerce and trade of the world into their hands; and all by the means of this excellent fabrick. *Molloy*, b. 2. chap. 1. sect. 1.

2. Hence it is, that ships and vessels of that kind were originally invented for use and profit, not for pleasure and delight; to plow the seas, not to lie by the walls, and to supply those of the mountains as well as those on the sea coasts. Therefore, upon any probable design, the major part of the owners may even against the consent, though not without the privity and knowledge of the rest, freight out their vessel to sea, *Ib.* Sect. 2.

3. If there are several part-owners of a ship, and the major part of them are for sending her a voyage to sea, to which the rest disagree; whereupon, according to the common usage in such cases, the greater number suggest in the Admiralty court the disagreement of their partners; and then, according to their usage there, they order certain persons to appraise the ship, who accordingly set a value thereon; and then the major part who agreed to the voyage, enter into a recognizance, wherein they bind themselves jointly and severally to the disagreeing parties, in a sum proportionable to their shares, according to the value set by the appraisers, to secure the shares in the ship of those who disagree to the voyage, against all adventures; though there can be no suit on this agreement, or stipulation, in the Admiralty court, the contract being made on land, and therefore of temporal consuance; yet a special action on the case lies for the violation thereof at common law. *Carth.* 26. *Hard.* 473.

4. A master of a ship is one who, for his knowledge in navigation, fidelity and discretion, hath the government of the ship committed to his care and management; but he hath no property, either general or special, by the constituting of him master; yet the law looks upon him as an officer, who must render and give an account for the whole charge, when once committed to his care and custody; and upon failure to render satisfaction; and therefore, if misfortunes happen, if they be either through negligence, wilfulness or ignorance of himself or his mariners, he must be responsible. *Hob. 11.*

5. But where a master of a ship brought an action on the case, and declared that the ship was laden with corn in such a harbour, ready to sail for *Dunkirk*; and that the defendant entered and seized the ship, and detained her *per quod impeditus et obstructus fuit in viagio*: and it was held, that it well lay; for the master has not the property of the ship, but the owners; and he is only a particular officer, and can only recover for his particular loss; yet he may bring trespass, as a bailiff of goods may; and then, as bailiff, he can only declare on his possession, which is sufficient to maintain trespass. *1 Salk. 10.*

6. If the master of the ship takes goods on board for hire, and is robbed in port, he must answer the damage; otherwise it is, if he be robbed by pirates on the high sea; for then the owner must be the loser: for, if he undertakes for hire to carry the goods, the common law cannot look upon him in a different aspect from a common carrier; for he cannot be looked upon as a mere servant to the owner but rather as an officer of the ship, and to sell the *bona peritura*, which is beyond the condition of a servant: but the civil law of the Admiralty excuses the masters when robbed by pirates, or on losing the

goods by any inevitable accident ; for the dangers of the sea are so various and so formidable, that a master shall not be understood to undertake against them, unless it had been included in the express words of the contract ; for where, in a well ordered society, a man undertakes, for the custody of another's property, he secures him against all loss ; but where a man is bound to encounter dangers, which civil society cannot guard against, he cannot be supposed to undertake farther than for his care : and, by the general custom of commerce, the merchant is the person that runs the venture, and not the master of the ship ; and it is the merchant that makes the gain of the venture. 1 *Vent.* 190. *Raym.* 220. 2 *Lev.* 69.

7. And as the master himself is answerable in the case above, so likewise hath it been held, that the owners are liable to the freighters, in respect of the freight, for the embezzlements, &c. of the master and mariners. *Car.* 58. 3 *Lev.* 258.

8. But this proving a great discouragement to trade, therefore, by the seventh of Geo. II. *cap.* 15, reciting that, Whereas it is of the greatest consequence and importance to this kingdom, to promote the encrease of the number of ships and vessels, and to prevent any discouragement to merchants and others from being interested and concerned therein ; and whereas it has been held, that in many cases owners of ships or vessels are answerable for goods and merchandize shipped or put on board the same, although the said goods and merchandize, after the same have been so put on board, should be made away with by the masters or mariners of the said ships or vessels, without the knowledge or privity of the owner or owners ; by means whereof, merchants and others are greatly discouraged from adventuring their fortunes, as owners of ships or vessels, which will necessarily tend to the prejudice of the trade and navigation

navigation of this kingdom; therefore, for ascertaining and settling how far owners of ships and vessels shall be answerable for any gold, silver, diamonds, jewels, precious stones, or other goods or merchandize which shall be made away with by the masters or mariners, without the privity of the owners thereof; it is enacted, That no person or persons who is, are, or shall be owner or owners of any ship or vessel, shall be subject or liable to answer for, or make good, to any one or more person or persons, any loss or damage by reason of the embezzlement, secreting, or making away with, (by the master or mariners, or any of them,) of any gold, silver, diamonds, jewels, precious stones, or other goods or merchandize, which, from and after the twenty-fourth of *June*, 1734, shall be shipped, taken in, or put on board any ship or vessel, or for any act, matter or thing, damage or forfeiture done, occasioned or incurred from and after the said twenty-fourth day of *June*, 1734, by the said master or mariners, or any of them, without the privity and knowledge of such owner or owners, further than the value of the ship or vessel, with all her appurtenances, and the full amount of the freight, due or to grow due, for and during the voyage wherein such embezzlement, secreting, or making away with, as aforesaid, or other malversation of the master or mariners, shall be made, committed, or done; any law, &c.

9. And, by sect. 2, It is further enacted, That if the several freighters or proprietors of any such gold, silver, diamonds, jewels, precious stones, or other goods or merchandize, shall suffer any loss or damage by any of the means aforesaid, in the same voyage, and in the value of the ship or vessel, with all her appurtenances, and the amount of the freight, due or to grow due, during such voyage, shall not be sufficient to make full compensation to all and every of

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them, then such freighters or proprietors shall receive their satisfaction thereout in average, in proportion to their respective losses or damages ; and in every such case, it shall and may be lawful to and for such freighters or proprietors, or any of them, in behalf of himself, and all other such freighters or proprietors, or to or for the owners of such ship or vessel, or any of them, on behalf of himself, and all the other part-owners of such ship or vessel, to exhibit a bill in any court of equity for a discovery of the total amount of such losses or damages, and also of the value of such ship or vessel, appurtenances, and freight, and for an equal distribution and payment thereof, amongst such freighters or proprietors, in proportion to their respective losses or damages, according to the rules of equity.

10. Sect. 3. Provided, that if any such bill shall be exhibited by or on the behalf of the part-owners of such ship, the plaintiff or plaintiffs shall annex an affidavit to such bill or bills, that he or they do not collude with any of the defendants thereto ; and shall thereby offer to pay the value of such ship or vessel, appurtenances and freight, as such court shall direct ; and such court shall thereupon take such method for ascertaining such value, as to them shall seem just ; and shall direct the payment thereof in like manner, as is now used and practised in cases of bills of interpleader.

11. Sect. 4. Provided also, that nothing in this present act shall extend, or be construed to extend, to impeach, lessen or discharge any remedy, which any person or persons now hath, or shall or may hereafter have, against all, every, or any the master and mariners of such ship or vessel, for or in respect of any embezzlement, secreting or making away with any gold, silver, diamonds, jewels, precious stones, or merchandize, shipped or loaded on board
such

such ship or vessel, or on account of any fraud, abuse, or malversation of, and in such master and mariners respectively ; but that it shall and may be lawful to and for every person or persons, so injured or damaged, to pursue and take such remedy for the same, against the said master and mariners respectively, as he or they might have done before the making of this act,



Principals and factors.

1. **A** Factor is a servant, created by a merchant's letter, and taketh a kind of provision, called factorage. Such persons are bound to answer the loss which happens by over-passing or exceeding their commission; but a simple servant, or an apprentice, can only incur his master's displeasure. The Spaniard hath a proverb, *Quien passa commission, pierde provision: He that exceeds his commission, shall lose his factorage.* But time and experience hath taught them to know better things; for now it is, *Subolca la paga; His purse must pay for it.* The gain of factorage is certain, however the success of the voyage proves; and it is the prudence of merchants to choose honest and industrious persons, for otherwise the factor may grow rich, and the merchant poor, the first being sure of his reward, the latter uncertain of his gain. *Molloy, B. 3. c. 8. sect. 1.*

2. In commissions they now generally insert these words, *dispose, do, and deal therein, as if it were your own;* by which the actions of the factor are to be excused, though it turns to his principal's loss, because it shall be presumed he did it for the best, and according to his discretion.

He is barely a trustee for his principal; therefore if his principal having goods in his hands, owes him money by simple contract, and then dies indebted by specialty more than his assets are worth, the factor cannot retain the goods. *Ib. sect. 2. 1 Vern. 428. 2 Vern. 117. 638.*

3. But

3. But a bare commission to a factor, to sell and dispose, will not enable him to trust, or give further day of payment; for in the due execution of his authority, he ought on a sale to receive *quid pro quo*, and as he delivers one, to receive the other; for otherwise, by that means, as they may trust six months, they may trust sixteen years. Nor by the virtue of that clause, of *doing as it were their own*, may they trust out to an unreasonable time, as ten or twenty years, instead of one, two, or three months, which is the customary time for the like commodities: and so it was adjudged, where one had remitted jewels to his factor in Barbary, who disposed of the same to Mulesack, the emperor, for a sum certain to be paid at a time, which being elapsed, the factor not obtaining it, was forced to make the same good to his principal. *Id. sect. 3. 7 Jac. B. R. Rol. 416. Barton and Saddocks. 1 Bulstr. 103 Yelv. 202. 2 Mod. 100, 101.*

4. Again, one and the same factor may act for several merchants, who must run the joint risque of his actions, though they are mere strangers to one another: as if five merchants shall remit to one factor five distinct bales of goods, and the factor makes one joint sale of them to one man, who is to pay one moiety down, and the other at six months end; if the vender breaks before the second payment, each man must bear an equal share of the loss, and be contented to accept their dividend of the money advanced.

But if such a factor draws a bill of exchange upon all those five merchants, and one of them accepts the same, the others shall not be obliged to make good the payment. *1 Salk. 126. Tamen quære de hoc.*

5. And as the authority and trust reposed in factors is very great, so ought they to be provident in their actions for the benefit of their principals; and therefore if factors shall give time to a man for pay-

ment of monies contracted on sale of their principal's goods, and after the time is elapsed they shall sell goods of their own to such persons for ready cash, (leaving their principal's unreceived) and then such man break, and become insolvent, the factor in equity and honesty ought to make good the losses; for they ought not to dispense with the non-payment of their principal's monies after they become due, and procure payment of their own to another man's loss; but by the laws of England they cannot be compelled. *Winch.* 24, 25. *Heath v. Turner.*

6. Yet if goods are remitted to a factor, and upon arrival he shall make a false entry at the custom-house, or land them without the customer, whereby he shall incur a seizure or forfeiture, whatsoever the principal is endamaged, he must inevitably make good, nor will such general clause help him, as above. But if a factor makes his entry, according to the invoice, or his letter of advice, and it falls out the same are mistaken, if the goods shall be lost, yet the factor is discharged. *Lane,* 65. *Trin.* 7 *Jac.* in *B. R. Levison v. Kirke.*

7. And as fidelity, diligence, and honesty are expected from the factor, so the law requires the like from the principal, judging the act of the one to be the act of the other; and therefore if a merchant shall remit counterfeit jewels to his factor, who sells and disposes of them for valuable considerations, as if they were right, if the factor receives any loss or prejudice thereby, by imprisonment or other punishment, the master shall not only make good the damage to the factor, but also tender satisfaction to the party damaged. And so it was adjudged, where one *How* was possessed of three counterfeit jewels, and having factors in Barbary, and knowing one *Southern*, a merchant, was resident on the place, consigns those jewels to his factor, who receiving them, intreated *Southern* to sell those jewels for him, telling him that they were good jewels; whereupon,
Southern,

Southern, not knowing they were counterfeit, sold them to the king of Barbary for eight hundred pounds (they being worth really but one hundred pounds) and delivered the money to the factor, who remitted the same to *How*. The king of Barbary not long after finding himself cozened, committed Southern to prison, till he repaid the eight hundred pounds. Whereupon Southern coming for England, brought his action against *How*, and had judgment to recover his damage; for the principal shall answer for his factor in all cases where he is privy to the act or wrong. And so it is in contracts, if a factor shall buy goods on the account of the principal, (especially if he has used so to do) the contract of the factor will oblige the principal to a performance of the bargain. 2 *Roll.* 5. 2 *Cro.* 468. *Bridg.* 126, 127. *Poph.* 143. *Goldsb.* 137.

8. When factors have obtained a *provenue*, or profit, for their principal, they must be careful how they dispose of the same, for without commission, or order, they must be responsible. Goods remitted to factors ought in honesty to be carefully preserved, for the trust is great that is reposed; and therefore a factor robbed in an account brought against him by his principal, the same shall discharge him 4 *Co.* 84. *Southcote's case*. And so it is, if a factor buys goods for his principal, which afterwards happen to be damaged, the principal must bear the misfortune; but if a factor shall dispose of the goods of his principal, and take money that is false, he shall there make good the loss; yet if he receives monies, and afterwards the same is by edict or proclamation lessened in value, the merchant, and not the factor, must bear the loss.

Again, in letters of credit, the factor must be sure to see, whether the commission is for a time certain, or to such a value, or not exceeding such a sum, or general, in which he must have a careful eye.

Where

Where the factor defrauds a state of the customs, which is there a capital crime in the factor, and a forfeiture of the freight, he shall have the benefit of the saving, 1 *Cha. Ca.* 25.

But if the customs were due to our king, he is bound to discover them on a bill brought. 1 *Cha. Ca.* 30.

9. A merchant remits goods to his factor, and about a month after draws a bill on him; the factor having effects in his hands, accepts the bill; then the principal breaks, against whom a commission of bankruptcy is awarded, and the goods in the factor's hands are seized: it has been conceived, the factor must answer the bill notwithstanding, and come in a creditor for so much as he was enforced by reason of his acceptance to pay.

10. If a factor enters into a charter party with a master for a freight, the contract obliges him; but if he lades aboard generally the goods, the principals and the lading are made liable, and not the factor, for the freightment.

The principal orders his factor, that as soon as he hath loaded (he having monies in his hand) to make an assurance on the ship and goods. If the ship happens to miscarry, by the custom of merchants he shall answer the same, if he hath neglected his commission. So it is, if he having made an assurance, and loss hath happened, he ought not to make a composition without orders from his principal. *Mol. B.* 3. c. 8. f. 9.

11. The following should be the standard rules which should govern the actions of factors, viz. honesty, faithfulness, diligence, and observing of commission, or instructions, which being considered and weighed by those that shall be judges of their actions, a right understanding, and determining of the matters arising between them and their principals, would soon be attained.

But the factors who want those qualities seldom or never render any other account but long and tedious
Chancery

Chancery suits, by which they not only have endamaged their very trade, but seek to marry their principals to a double affliction, by obliging them to sue either a beggar, or what is worse, a naughty man.

On the other hand, factors that behave themselves worthily and prudently in the service of their principals, ought, after their tedious service, to be numbered amongst those that justly challenge that worthy denomination of *merchant*; and such was he who never had made breach of commission in the service of his principal, but once; that was, when wines were committed to him to dispose of, but the price (by reason of a glut) fell; advice of which was given to the principal, who immediately in a passion writes to his factor, to take a hammer, and knock out the heads; but the factor (considering that leave must be given to losers to speak) knew better things, and kept the goods, and sold them for their full value; and when accounts were to be made up, instead of bringing to the account of wines, their heads knocked out *per order*, he happily brought *per contra*, sold at their intrinsic value. *Molloy, B. 3. c. 8. sect. 10.*



C U S T O M S.

I. **C**USTOMS, subsidies, tolls, excises, imposts, and other duties upon commodities imported or exported, are due to the particular princes or states, by the general law of nations, as a matter inherent to their prerogatives, as they are the absolute commanders, proprietors, and maintainers of the harbours, havens and ports, where the commodities are exported or imported: and all merchants are bound to take notice thereof, and observe the same, according to the laws used in all countries respectively, whereby they are secured and defended in their trade and traffic.---To give an exact account of the nature, antiquity, several sorts of customs, subsidies, imposts, and other duties relating to merchants, would take up too large a compass for this treatise; we shall therefore begin with the statute 12 Car. II. called, *The Subsidy of Tonnage and Poundage*, which is the foundation of our customs.

2. Stat. 12 Car. II. cap. 4. (Intituled, An act for granting to the king a subsidy of tonnage and poundage, and the other sums of money payable upon merchandize exported and imported) Sect. 1. The commons assembled in parliament, reposing trust and confidence in your majesty, in and for guarding and defending of the seas against all persons intending, or that shall intend, the disturbance of your said commons in the intercourse of trade, and the invading of this your realm, for the better defraying the necessary expences thereof, which cannot otherwise
be

be effected, without great charge to your majesty, do, &c. give and grant unto you, our supreme liege, lord, and sovereign, one subsidy called *tonnage*; that is, of every ton of wine of the growth of France, or the dominions of the French king, that shall come into the port of London, by way of merchandize, by natural born subjects, four pounds ten shillings; and by strangers six pounds; of every ton of like wine, which shall be brought into the other ports of this kingdom, and the dominions thereof, by way of merchandize, by natural born subjects, three pounds; and by aliens four pounds, ten shillings; of every butt or pipe of Muscadels, Malmsies, Cuts, Tents, Alicants, Bastards, Sacks, Canaries, Maligoes, Madeiras, and other wines called Sweet Wines, of the growth of the Levant, Spain, Portugal, or elsewhere, that shall come into the port of London by natural born subjects, two pounds, five shillings, and by strangers three pounds; of every butt and pipe of like wine which shall be brought into the other ports by natural born subjects, thirty shillings; and by strangers forty-five shillings: and of every awm of Rhenish wine, or wine of the growth of Germany, that shall be brought into this realm, and the dominions thereof, by natural born subjects, twenty shillings; and strangers twenty-five shillings*; which rates are the same which are expressed in a book of rates here-referred to†: and also one other subsidy called Poundage: viz. of all goods and merchandize of every merchant, to be carried out of this realm, or any dominions to the same belonging, or to be brought into the same by way of merchandize, of

* See Vaugh. 160.

† Wines are to pay a greater or less duty in respect of the countries from which they are exported, the port to which they are imported, and in respect of the persons importing, if they be natural born subjects or aliens. Hungary wines imported from Ham-burgh are to pay as German wines, by 1 Ann. c. 13. sect. 112.

the value of every twenty shillings, according to the values rated in the said book of rates, twelve pence, and after that rate. And of every twenty shillings value of the † native commodities of this realm, to be carried out of this realm, by any merchant alien, according to the value in the said book, twelve pence over and above the twelve pence aforesaid; except out of this grant of poundage, all woollen cloths made in England, called old draperies, and all wines before limited to pay tonnage, and all fish, English taken, and brought by English bottoms, and all fresh fish and bestial, and all other goods which in the book of rates are mentioned to be custom-free.

3. Sect. 3. If any wines or merchandize, whereof the subsidies shall be due, shall be shipped into any boat or vessel, to the intent to be carried beyond sea, or brought from beyond sea into this realm, or other his majesty's dominions, by way of merchandize, and unshipped to be laid on land, the duties not paid, or lawfully tendred, to the collector or his deputy, with the consent of the comptroller or surveyor, nor agreed for in the Custom-house; the same shall be forfeited to his majesty; the one moiety of the rate thereof to his majesty, and the other moiety to him that will seize or sue for the same; and all merchants coming into this realm, shall be well intreated and demeaned for such things as subsidy is granted, as they were in the time of his majesty's predecessors, without oppression, paying the subsidies.

4. Sect. 4. If any goods of any merchant born denizen, shall be taken by enemies or pirates upon the sea, or perish in any ship that shall be taken or perished, whereof the duties shall be paid or agreed for, and that duly proved before the Treasury or chief baron of the Exchequer, by the examination
of

† See Stat 8. Geo. I. c. 15. sect. 7. herein after mentioned.

of the merchants, or by two witnesses, or other reasonable proof; the same merchants may newly ship in the same port, where the goods were customed, so much other goods as the goods lost shall amount unto in custom, without paying any thing, so as the proof be recorded and allowed in the Exchequer, and certified to the collectors of the port; and every merchant denizen, who shall ship goods in any carrack or galley, shall pay all customs and subsidies as any alien born.

5. Sect. 5. Provided that it shall be lawful to all subjects to transport in ships, and other vessels of subjects, all herrings, and other sea-fish to be taken by subjects out of any port, to any place out of his majesty's dominions, without paying custom.

6. Sect. 6. The rates intended by this act shall be the rates mentioned in one book intituled *The Rates of Merckandize*, [See p. 337.] subscribed with the hand of Sir Harbottle Grimstone, baronet, speaker of the House of Commons; which book of rates agreed on by the commons, shall be as effectual as if the same were included in this act.

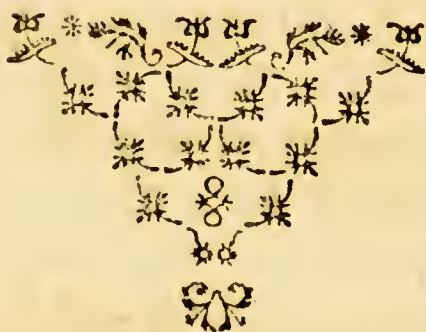
7. Sect. 13. Over and above the rates before-mentioned, there shall be paid to his majesty of every ton of wine of the growth of France, Germany, Portugal, or Madeira, brought into the port of London, or elsewhere, three pounds, within nine months after the importing, for the payment of which duties the importer shall give security; and if any of the said wines, for which the additional duty in this clause is paid or secured, be exported within * twelve months after the importation, the additional duty shall be returned, or the security discharged, as to so much as shall be exported; and if at the importation the importer shall pay ready money

* These twelve months are enlarged to three years by 7 Geo. I. cap. 21. sect. 10.

money, he shall be allowed after the rate of ten *per cent.* for a year.

8. Sect. 15. The prisage of wines shall not be charged with the payment of any customs insured by this act.

Confirmed by 13 Car. II. cap. 7. The subsidy inward is made perpetual, and part of the aggregate fund, by 1 Geo. I. c. 12. And the subsidy outward is made perpetual by 9 Ann. c. 6. and part of the general fund by 3 Geo. I. c. 7. This is commonly called the Old Subsidy.



T H E

R A T E S O F M E R C H A N D I Z E .

See Paragraph 6, Page 335.

R A T E S I N W A R D S .

A.

	£.	s.	d.
A D Z E S, the dozen	0	12	0
Aggets, small as a bean, the hundred dozen	0	13	4
Aggets large, the piece	0	0	6
Alphabets, the set, containing twenty-four	0	5	0
Allom, the hundred weight	2	0	0
Alpisti, or Canary seed	3	15	0
Amber, { the pound	0	3	8
{ the mast, containing two pounds and a half	0	8	4
{ beads, the pound	0	10	0
Anchovies, the little barrel	0	7	6
Andirons, { of Lattin, the pound	0	1	0
{ of iron, the pair	0	10	0
Andlets, or Males, the pound	0	3	0
Anvils, the hundred weight	0	15	0
Aneile of Barbary, the pound	0	1	6
Apples, { the bushel	0	0	4
{ the barrel, containing three bushels	0	1	0
{ vocat. pippins, or runnits	0	3	0
Aqua Vitæ, the barrel	2	13	4
Aqua Vitæ, the hoghead	4	0	0
Armour, old, the hundred weight	1	0	0
Arrows for trunks, the groce	0	6	8
Ashes, { Pot-ashes, the barrel, containing 2 hundred wt.	1	5	0
vocat. { Sope-ashes, the last, containing 12 barrels	6	0	0
Awl-blades, the thousand	0	13	4
Aulgers, the groce	1	0	0
Axes, the dozen	0	6	8

Z

B.

B.

	£.	s.	d.
Babies for children, the groce	0	17	10
Babies heads of earth, the dozen	0	13	4
Other toys for children to pay 16 d. in 20 s.			
Bacon, { of Ireland, the fitch	0	5	0
{ of Westphalia and Hamburgh, the hund. wt.	1	6	8
Balks, { great, the hundred, containing 120	12	0	0
{ middle	5	0	0
{ small	2	0	0
Bags, { with locks, the dozen	2	8	0
{ with steel rings, without locks	1	12	0
Balances, { gold balances, the groce	5	6	8
{ Ounce balances	2	13	4
vocat. { the sort, containing four dozen	3	11	2
Balls, { Tennis balls, the thousand	2	0	0
{ washing balls, the groce	2	0	0
Bandeliers, the hundred, five score	0	16	8
Bandstrings, the dozen knots	0	10	0
Bands, { Flanders bands of bone lace, the band	10	0	0
{ Cutwork	20	0	0
Bankers of verdure, the dozen pieces	4	0	0
Barbers aprons, the piece, not above ten yards	0	13	4
Barlings, the hundred, containing 120	1	13	4
Barillia, the barrel, containing two hundred weight	1	0	0
Basket-rods, the bundle	0	6	8
Baskets, vocat. hand-baskets, the dozen	0	3	4
Basons of latten, the pound	0	1	4
Bast, { or straw hats knotted, the dozen	0	6	8
{ plain	0	1	6
Bast Ropes, { the rope	0	0	6
{ the bundle, containing ten ropes	0	5	0
{ the hundred weight	0	8	0
Battery, or Kettles, the hundred weight	9	0	0
Bayes of Florence, per yard	1	5	0
{ Amber, the pound	0	10	0
{ Bone, the great groce, cont. 12 small groce	1	10	0
{ Box	1	10	0
Beads of { Coral, the pound	0	10	0
{ Chrystal, the thousand	3	0	0
{ Glafs, the great groce	0	10	0
{ Wood	0	10	0
{ Jasper square, the hundred stones	2	0	0
Beaupers, the piece, containing 25 yards	1	5	0
Beef, { of Ireland, the barrel	1	0	0
{ or pork, of Ireland, per ton	6	0	0
Bells,			

		£.	s.	d.
Bells, vocat.	Hawk's-bells, French, the dozen pair	0	5	0
	Noremburgh	0	2	0
	Horse-bells, the groce	0	10	0
	Morrice-bells	0	5	0
	Dog-bells	0	1	4
	Clapper-bells, the pound	0	1	0
	Bell-metal, the hundred weight	1	13	4
	Bellows, the pair	0	3	4
	Bits for bridles, the dozen	1	0	0
	Blacking, the hundred weight	4	0	0
	Blankets, vocat. Paris Mantles, coloured, the mantle	1	6	8
	Blankets, vocat. Paris Mantles, or others, uncoloured,	1	0	0
Boards, vocat.	Barrel boards, the hundred, containing 120	0	5	0
	Clap-boards	0	15	0
	Paste-boards for books, the thousand	0	13	4
	Pipe-boards, the hundred, containing 120	1	0	0
	White boards, the board	0	1	0
	Bodkins, the groce	0	6	8
	Bomspars, the hundred, containing 120	1	13	4
	Boratoes, or { narrow, the single piece, not above 15 yds.	6	0	0
	Bombasines, { broad	7	0	0
	Books unbound, the basket, containing 8 bales, or 2 fats	8	0	0
	Bosses for bridles, the groce	1	0	0
	Boxanoes, per piece	0	10	0
Bottles,	of earth, the dozen	0	5	0
	of glass, covered with wicker	1	0	0
	with vices covered with leather	4	10	0
	uncovered	0	4	6
	of wood, the groce	0	10	0
	Boultel Rains, the piece,	0	8	0
	Bows, vocat, Stone bows of steel, the piece	0	10	0
	Bow-staves, the hundred, containing 120	4	0	0
Boxes,	Fire, or tinder boxes, the groce	1	0	0
	Nest boxes	3	0	0
	Pepper boxes	1	2	6
	Spice boxes, the dozen	0	6	0
	Round boxes for marmalade, the dozen	0	4	6
	Sand boxes, the groce	1	0	0
	Sope boxes, the shock, containing 60 boxes	2	0	0
	Touch boxes, covered with leather, the dozen	0	3	0
	———— covered with velvet	0	15	0
	of metal, gilt	1	0	0
	Tobacco boxes, the groce	1	10	0
	Bracelets, or { of glass, the small groce, cont. 12 bundles	0	4	0
	Necklaces, { red	0	4	0
Brass, or	Laver cocks, the pound	0	1	4
	Pile weights	0	1	0
	Trumpets, the dozen	0	12	0
	Lamps	0	10	0

	£.	s.	d.
Bridles, the dozen	1	0	0
Brouches of latten or copper, the groce	0	12	0
Brushes, vocat. Beard-brushes, the groce	0	6	8
Brushes, vocat. {	0	3	0
	0	6	8
	0	6	8
	0	1	0
	0	13	4
	0	5	0
Brimstone, the hundred weight	0	1	4
	0	6	8
Bristles, {	0	5	0
	0	10	0
Buckrams, {	0	10	0
	0	5	0
	2	10	0
	0	2	0
Buckles, {	1	0	0
	0	7	6
Buffins, Mocadoes, { narrow, the piece, not above 15 yds.	3	0	0
and lile Grogams, { broad	4	10	0
Bugafins, the half piece	0	5	0
Bugle, {	0	4	0
	0	6	8
	0	8	0
Bullions for purses, the groce	0	10	0
Bulrushes, the load	1	0	0
Burs for millstones, the hundred, containing five score	2	10	0
Buskins of leather, the dozen pair	4	0	0
Bustians, the piece, not above fifteen yards	2	0	0
Butter, {	1	0	0
	0	10	0
Buttons, {	2	13	4
	2	13	4
	2	13	4
	2	13	4
	0	8	0
	1	6	8
	1	0	0
	2	0	0
	1	0	0
	0	1	4
	4	0	0
	0	4	0

C.

	£.	s.	d.
Cabinets, { or counters, small, the piece	2	0	0
{ large	4	0	0
Cables, the hundred weight	0	13	4
Caddas, the dozen pieces, every piece 36 yards	3	0	0
Calve-skins in the hair, the piece	0	1	8
Cambletto, half silk, half hair, the yard	0	10	0
Candles, tallow, the hundred weight	1	8	0
Candle-plates, of brass or latten, the pound	0	1	4
Candlesticks, { of brass or latten	0	1	4
{ of wire, the dozen	0	6	8
Candle-wick, the hundred weight	3	10	0
Canes, { reeds, the thousand	2	10	0
vocat. { of wood, the dozen	0	4	0
Cant Spars, the hundred, containing 120	1	13	4
Capers, the pound	0	0	6
Capravens, the hundred, containing six score	3	13	4
Cap-hooks, the groce	0	15	0
{ double tosted, the dozen	2	8	0
{ for children	1	0	0
Caps, { Night-caps of sattin and velvet	3	0	0
vocat. { of silk, knit	4	0	0
{ of woollen	1	0	0
{ of linnen	0	8	0
{ of Tonney, the piece, cont. 2 yds and a half	1	10	0
{ of Cornix	1	5	0
Carpets, { Brunswick carpets	0	10	0
{ Gentish, the dozen	3	0	0
{ China of cotton, coarse, the piece	0	4	0
{ Turkey or Venice, short	1	10	0
{ long, containing four yards	8	0	0
{ of Persia, the yard square	2	5	0
Carrels, the piece, containing fifteen yards	1	6	8
Cases for { Number 3 and 4, the dozen	0	4	0
looking- { Number 5 and 6	0	7	0
glasses, { Number 7 and 8	0	10	0
gilt, of { Number 9 and 10, and upwards	1	13	4
Cases for { Number 3 and 4	0	2	0
looking- { Number 5 and 6	0	3	6
glasses { Number 7 and 8	0	5	0
ungilt of { Number 9 and 10	0	16	8
{ with wooden combs, garnished, the dozen	1	0	0
{ with small ivory combs	1	6	8
Cases { with middle sort, ivory	2	0	0
{ with large ivory	4	0	0
{ for combs single, the groce,	1	0	0

Cases,

	£.	s.	d.
for wool, the pair	0	5	0
of bone, the pound	0	4	0
of box, the groce	0	10	0
abs, { voc. lightwood	0	6	8
of horn, the dozen	0	2	0
of ivory, the pound	0	10	0
voc. horse-combs, the dozen	0	4	0
Comfets, the pound	0	2	0
Compasses, { of iron. the dozen	0	2	0
{ of brass	0	4	0
for ships	0	7	6
Copper, { unwrought, the hundred weight	0	10	0
{ chains, the chain	0	2	0
{ purles, or plate, the mark	0	6	8
Copperas, green, the hundred weight	0	15	0
Cordage	0	13	4
Cork { of iron, the thousand,	0	6	8
tacks, { of steel	1	13	4
Cork { for shoe-makers, the dozen pieces	0	4	0
{ of all other sorts, the hundred weight	0	16	8
Counters of latten, the pound	0	1	0
Croshaw { laths	0	0	8
{ thread	0	0	8
{ racks, the piece	0	10	0
Cruses, { of stone, without covers, the hundred, con- }	0	10	0
{ taining five score			
{ with covers	1	6	8
Cushion { coarse, the dozen	2	10	0
cloths, { of tapistry	4	10	0
Cuttle-bones, the thousand	1	6	8

D.

Dags, with firelocks, the piece	1	0	0
{ blades, the dozen	1	6	8
{ for children	0	4	0
Daggers, { of bone, for children	0	2	0
{ black, with velvet sheaths	3	0	0
{ gilt, with velvet sheaths,	4	0	0
Deals, { Meabro, the hundred, containing six score	4	0	0
vocat. { Norway	5	0	0
{ Burgindor	12	0	0
{ Spruce	15	0	0
Desks, { for books, the dozen	0	4	0
{ for women, covered with woollen, the piece	0	5	0
{ with velvet	0	10	0
Dials,			

		£.	s.	d.
Dials,	{ of wood, the dozen	0	3	0
	{ of bone	0	12	0
Dimity,	the yard	0	3	0
Dogs of earth,	the groce,	4	0	0
	{ with caddas, the piece, containing 15 yards	1	10	0
	{ with filk	2	0	0
Dornix,	{ with wool	1	5	0
	{ with thread	1	0	0
	{ French making, the ell	0	2	6
Dudgeon,	the hundred pieces, containing five score	1	0	0
Durance,	{ with thread, the yard	0	6	8
	{ with filk	0	10	0
Dutties,	the piece	1	0	0
	{ Acacia, the pound	0	4	0
	Acorus	0	1	0
	Adiantum album	0	0	8
	Adiantum nigrum	0	0	6
	Agnus Castus seeds	0	1	0
	Alkanet roots	0	1	0
	Alchernes { Syrup	0	6	8
	{ Confectio, the ounce	0	4	0
	Aloes Cicotrina, the pound	0	5	0
	Aloes epatica	0	2	0
	Allum ronish, the hundred weight	1	0	0
	Ambergreece, the ounce troy	3	0	0
	Amios seeds, the pound	0	0	8
	Amomi seeds	0	0	8
	Anacardium	0	3	4
	Angelica,	0	1	0
	Antimonium preparatum	0	0	8
Drugs, voc.	{ Argentum sublime	0	3	0
	Aristolochia longa & rotunda	0	1	4
	Asarum roots	0	1	0
	Aspalathus	0	1	6
	Assa foetida	0	1	2
	Almonds, bitter, the hundred weight	2	0	0
	Alumen Plume, the pound	0	1	0
	Balaustium	0	2	6
	Balsamum artificial	0	3	4
	Balsamum natural	0	10	0
	Bdellium	0	2	6
	Benalbum, or Rubrum	0	2	0
	Benjamin	0	5	0
	Bezoar { of East India, the ounce Troy	3	0	0
	Stone, { of West India	0	10	0
	Black lead, the 112 pounds	1	10	0
	Blatta Bizantia, the pound	0	2	0
	Bolus Communis, the hundred weight	0	6	8
	Bolus			

Rates of Merchandize.

345

	£.	s.	d.
Bolus Verus, the pound	0	0	8
Borax, in paste	0	3	4
Borax refined	0	13	4
Bunkins	0	2	6
Callamus	0	0	8
Camphire refined	0	5	0
Camphire unrefined	0	2	6
Cancri Oculus	0	4	0
Cantharides	0	5	0
Carraway Seed, the 112 pounds	1	4	0
Cardamoms, the pound	0	3	0
Carpo Balsami	0	4	0
Carrabe	0	1	0
Carthamus Seeds	0	0	8
Cassia Fistula	0	1	6
Cassia Lignea	0	1	8
Castoreum	0	10	0
Cerussa, the 112 pounds	1	10	0
China roots, the pound	0	6	8
Ciceres	0	0	6
Ciperus, the 112 pounds	1	13	4
Ciperus Nuts, the pound	0	0	8
Civet, the ounce Troy	2	0	0
Coculus Indiæ, the pound	0	2	0
Coloquintida	0	2	0
Coral in fragments	0	3	4
Coral, whole	1	0	0
Coriander Seeds, the 112 pounds	1	0	0
Cortex Guaci	3	0	0
Cortex Caperum, the pound	0	1	0
Cortex Tamarisci	0	0	8
Cortex Mandragoræ	0	2	0
Cofcus	0	1	8
Cubebs	0	1	4
Cummin Seed, the 112 pounds	1	13	4
Cuscuta, the pound	0	1	0
Cyclamen	0	2	0
Citrago	0	1	0
Cetrach	0	1	0
Cinabrum	0	2	6
Copperas, { white, the 112 pounds	2	0	0
{ blue, of Dantzick or Hungary	0	12	0
Cambogium, the pound	0	3	4
Chrystal, in pieces	0	3	4
Carlina	0	1	0
Carolina	0	0	4
Cortex Winteranus	0	0	8
Daucus Creticus	0	4	0
A a			
			Diagredium

Drugs, voc.

		£.	s.	d.
	Diagredium	1	0	0
	Diptamus { leaves	0	1	0
	{ roots	0	1	6
	Doronicum	0	2	6
	Eleborus	0	0	8
	Epithemum	0	1	0
	Aes Uftum	0	1	4
	Euphorbium	0	0	8
	Fennel Seeds	0	0	6
	Fenugreek, the 112 pounds	0	15	0
	Flory, the pound	0	2	0
	Folium Indiæ	0	5	0
	Fox-lungs	0	3	0
	Frankincense of France, the 112 pounds	0	12	0
	Galbanum, the pound	0	1	6
	Galanga	0	1	6
	General	0	1	4
	Gentiana	0	0	6
	Guinea Pepper	0	1	0
	Grana Pinæ	0	1	0
	Green Ginger	0	2	0
	Gum Animi	0	1	0
	Gum Armoniac	0	1	0
	Gum Carranæ	0	4	0
Drugs, voc.	Gum Tragagant	0	1	0
	Gum Elemni	0	0	10
	Gum Hederæ	0	4	0
	Gum Lack	0	1	0
	Gum Opopanax	0	6	8
	Gum Sarcocol	0	1	6
	Gum Serapinum	0	1	6
	Gum Taccamahaccæ	0	4	0
	Grana tinctorum	0	2	6
	Grains of Guinea, the 112 pounds	1	10	0
	Gum Sandrake	1	8	0
	Gum Guaci, the pound	0	4	0
	Gum Caramon	0	0	6
	Hermodactilus	0	2	0
	Hypocistis	0	2	0
	Horns of Harts, the hundred	1	10	0
	Incense, the 112 pounds	5	0	0
	Ireos	2	10	0
	Jujubes	0	1	0
	Jalap	0	4	0
	Juniper-berries, the 112 pounds	1	0	0
	Labdanum, the pound	0	1	0
	Lapis Calaminaris, the 112 pounds	0	16	8
	Lapis Hematitis, the pound	0	1	0
				Lapis

	£.	s.	d.
Lapis Judaicus	0	1	0
Lapis Lazuli	0	10	0
Lapis Tutia	0	1	0
Leaves { of roses	0	1	0
{ of violet or flowers	0	0	8
Lyntiscus	0	1	8
Lignum Aloes	0	10	0
Lignum Asphaltum	0	1	0
Lignum Rhodicum, the 112 pounds	0	10	0
Lignum Vitæ	0	10	0
Litharge of gold	0	12	0
Litharge of silver	0	10	0
Locust, the pound	0	1	4
Lupins, the 112 pounds	0	10	0
Lentils, the pound	0	0	3
Lapis Contrayerva, the ounce	0	5	0
Lignum Nephriticum, the pound	0	4	0
Manna	0	2	6
Marmalade	0	1	0
Mastick, white	0	3	4
Mastick, red	0	1	0
Mechoacan	0	2	6
Mercury Sublimat.	0	3	0
Mercury præcipitat.	0	6	8
Mithridate Venetia	0	10	0
Millium Solis	0	1	0
Mirabolanes, dry	0	1	0
Mirabolanes, condited	0	1	8
Mirtle-berries	0	1	0
Mummia	0	1	0
Musk, the ounce Troy	2	0	0
Musk-cods, the dozen	2	0	0
Myrrha, the pound	0	3	0
Nygella	0	0	8
Nytrum	0	2	0
Nutmegs condited	0	4	0
Nux de Ben	0	1	0
Nux Cupressii	0	0	8
Nux Indica, the piece	0	0	6
Nux Vomica, the pound	0	0	8
Nardus Celtica, the 112 pound	5	12	0
Nux Pini, the pound	0	1	0
Opium	0	10	0
Osiphium huirredum	0	0	6
Orcant	0	1	0
Orange-flower { ointment	0	2	6
{ water, the gallon	0	5	0
Origanum, the pound	0	0	8
A 2 2			Off

Drugs, voc.

Rates of Merchandize.

	£.	s.	d.
Offa de Corde Cervi	2	0	0
Oil of Amber	0	10	0
Oil of Rosemary	0	8	0
Oil de Bay, the 112 pounds	2	0	0
Oil of Mace, or Nutmegs, the pound	0	6	0
Oil de Ben	0	6	8
Oil of Spike	0	1	8
Oil of Almonds	0	1	0
Oil de Scorpions	0	2	8
Oleum Petroleum	0	1	8
Oleum Turpentine	0	0	6
Orabus	0	0	6
Orpment, the 112 pounds	2	0	0
Panther, the pound	4	0	0
Pearl beaten, the ounce Troy	0	3	4
Pellitory, the pound	0	0	6
Pepper, long	0	1	0
Piony Seeds	0	0	8
Pistachias	0	1	0
Pix Purgundiæ, the 112 pounds	0	15	0
Polium Montanum	0	0	8
Polipodium	0	0	4
Pomegranate-peels, the 112 pounds	2	0	0
Poppy Seeds, the pound	0	0	8
Pfyllium	0	0	8
Prunelloes	0	1	0
Rhaponticum	0	13	4
Radix Esule	0	1	0
Red Lead, the 112 pounds	0	16	8
Rhabarbarum, the pound	1	0	0
Rosset	0	0	6
Radix Contrayerva	0	3	4
Radix Scorcionera	0	3	4
Radix Peonæ	0	0	8
Sal Alkali	0	4	0
Sal Niter	0	1	6
Sandracha, the 112 pounds	1	8	0
Sandiver	0	10	0
Sanguis Draconis, the pound	0	3	4
Sarsaparilla	0	3	4
Sasafras, the 112 pounds	1	0	0
Saunders, white, the pound	0	1	0
Saunders, yellow	0	2	0
Scincus Marinus, the piece	0	0	4
Scordium, the pound	0	0	6
Scorpions, the piece	0	0	3
Sebessines, the pound	0	1	0
Seeds for gardens	0	0	8
			Seler

Drugs, voc.

	£.	s.	d
Seler Montanus	0	0	8.
Semen Cucumeris, Cucurb. Citrul. Melon.	0	0	8
Senna	0	2	6
Soldonella	0	0	8
Sperma Ceti, fine	0	5	0
Sperma Ceti, coarse, the 112 pounds	4	0	0
Sanguis Hirci, the pound	0	1	0
Spikenard	0	6	8
Spodium	0	1	6
Spunges	0	3	4
Squilla, the 112 pounds	1	5	0
Squinanthum, the pound	0	3	4
Stechados	0	0	10
Staphisager, the 112 pounds	2	0	0
Storax Calamita, the pound	0	5	0
Storax Liquida	0	1	0
Succus Liquoritiæ	0	1	0
Sulphur Vivum	0	0	8
Tamarindes	0	0	10
Terra Lemnia	0	5	0
Terra Sigillata	0	3	0
Thlaspii Semen	0	1	0
Torcisci de Vipera, the ounce Troy	0	5	0
Treacle, the pound	0	2	0
Treacle of Venice	0	10	0
Turbith	0	5	0
Turbith Thapsiæ	0	2	0
Turmerick	0	1	0
Turpentine of Venice, Scio, or Cyprus	0	1	8
Turpentine, common, the 112 pounds	0	10	0
Talke, white, the pound	0	0	6
Talke, green	0	2	0
Varnish, the 112 pounds	2	0	0
Vitriolum Romanum, the pound	0	1	0
Umber, the 112 pounds	1	0	0
Viscus quercinus, the pound	0	4	0
White Lead, the 112 pounds	1	0	0
Worm Seeds, the pound	0	3	4
Zedoaria	0	3	4

Drugs, voc.

All Drugs imported directly from the place of their growth, in English shipping, to be rated one third of what is charged in the book.

E.

	L.	s.	d.		
Earlings, the groce	1	0	0		
Earthen-ware, vocat.	{	brick-stones, the thousand	1	0	0
		Flanders tiles	2	0	0
		gally tiles, the foot	0	1	0
		paving tiles, the thousand	3	0	0
		pantiles	8	0	0
All other sorts of Earthen-ware to pay, for every } 20s. value	0	1	6		
Eggs, the hundred, containing six score	0	1	8		
Elephant's teeth, the hundred weight	4	0	0		
Emery-stones	0	8	0		
Ebony-wood	1	0	0		

F.

Fans;	{	for corn, the piece	0	6	8		
		of paper, the dozen	0	6	8		
		for women, French making	2	0	0		
Feathers,	{	for beds, the one hundred and twelve pounds	4	0	0		
		voc. Estridge feathers, undressed, the pound	1	0	0		
		dressed	2	0	0		
Feather-beds,		the piece	2	13	4		
Felts for cloaks,	}	French making, three yards and an	4	0	0		
half long, one yard and an half broad							
Fiddles for children,		the dozen	0	4	0		
Fire-shovels			0	13	4		
Fire-shovel plates,		the hundred weight	0	13	4		
Figuretto,		the yard	0	8	4		
Files,		the groce	2	0	0		
Fish,	{	Cod-fish, the barrel,	0	13	4		
		Cod-fish, the hundred, containing six score	2	6	8		
		Cods-heads, the barrel	0	3	4		
		Cole-fish, the hundred, containing six score	1	0	0		
		Eels,	pimper eels, the barrel,	1	0	0	
			shaft, kine, or dole eels	1	10	0	
			spruce eels	2	0	0	
			stub eels	2	6	8	
		voc.	quick eels, the ship's lading	20	0	0	
		Gull-fish, the barrel	0	6	8		
		Haddocks	0	6	8		
		Herrings,	white	0	8	4	
			red, the cade, containing 500	0	8	4	
		Lampries,		the piece	0	1	0
		Ling,		the hundred, containing six score	3	6	8
		New-land	{	fish, small	0	10	0
				middle fort	1	0	0
				great	1	10	0
				Salmon,			

Rates of Merchandize.

351

		£.	s.	d.
	Salmon { the barrel	2	0	0
	{ girles, the barrel	0	15	0
	Seal-fish, the fish	0	13	4
Fish,	Stock- { Cropling, [the hundred, containing	0	13	4
	fish, { six score	1	6	8
	vocat. { Lub-fish	0	6	8
	{ Titling	0	3	4
	Whiting, the barrel	0	1	8
Flannel,	the yard	0	5	0
Flasks,	{ covered with leather, the dozen	2	0	0
	{ with velvet	0	6	8
	{ of horn	1	0	0
Flax,	{ undressed, the hundred weight	15	0	0
	{ dressed	0	0	2
Fleams,	the piece	2	0	0
Flocks,	the hundred weight	1	0	0
Flutes,	coarse, the groce	8	0	0
Frizado,	the piece, containing twenty-four yards	2	0	0
	Armins, the tymber, containing forty skins	0	2	0
	Badger-skins, the piece	1	0	0
	Bear-skins, { black or red	2	0	0
	{ white	0	6	8
	Beaver-skins, { the whole piece	0	1	8
	{ wombs, the piece	2	0	0
	{ white, tawed, the hundred, con-	1	6	8
	{ taining five score	3	10	0
	Budge, { black, tawed, the dozen	1	0	0
	{ black, untawed, the hundred, con-	1	0	0
	{ taining five score	0	8	4
Furs,	Poules, the fur, containing four	0	6	8
voc.	pains	0	6	8
	Navern, the hundred legs, contain-	0	6	8
	ing five score	0	8	0
	Rumney	0	12	6
	Calaber, { untawed, the tymber, containing	0	6	8
	{ forty skins	0	8	0
	{ tawed	1	0	0
	{ seasoned, the pain	0	12	6
	{ stag	2	0	0
	Cat's { skins, the hundred, containing five score	1	0	0
	{ poults,	0	6	3
	{ poults, the mantle	0	6	3
	{ wombs, the pain	0	13	4
	Dockerers, the tymber, containing forty	0	12	6
	skins			
	Fitches, the pain			
				Foxes

		£.	s.	d.	
Furs, voc.	Foxes,	the black fox-skin	10	0	0
		the ordinary skin	0	1	4
		the pain	0	15	0
		wombs, or pieces	0	10	0
		backs, the dozen	0	13	4
	Foynes	tails, the pain	0	12	6
		with tails, the piece	0	3	4
		without tails	0	4	0
		raw	0	1	0
		poults, the hundred, contain. five score	1	6	8
	Grays,	wombs seasoned, the pain	1	6	8
		wombs stag	0	15	0
		untawed, the tymber, contain. 40 skins	0	8	4
		tawed	0	12	6
		black, raw, the skin	0	12	6
	Jennets	black, seasoned	0	16	8
		gray, raw	0	3	0
		gray, seasoned	0	4	0
	Letwis,	tawed, the tymber, containing 40 skins	0	8	4
		untawed	0	6	0
	Leopards	skins, the piece	1	5	0
		wombs, the pain	5	0	0
	Lewzernes skins, the piece		2	10	0
	Mar- trons	skins, the tymber, containing forty	10	0	0
		the pain	9	0	0
		poults	0	10	0
		gylls, the tymber	0	12	0
		tails, the hundred, containing 5 score	2	0	0
	Miniver, the mantle		0	13	4
	Minks,	untawed, the tymber	3	0	0
		tawed	4	0	0
	Mole-skins, the dozen		0	0	6
	Otter-skins, the piece		0	5	0
	Ounce-skins		0	12	6
	Sables, the tymber		30	0	0
	Weazle-skins, the dozen		0	0	4
	Wolf- skins,	tawed, the piece	1	10	0
		untawed	1	3	0
	Wolverings		0	12	6
Fustians, vocat.	{	Amsterdam or Dutch Fustians, the piece, containing two half pieces of 15 yards	8	0	0
		Barmilians	8	0	0
		Cullen	8	0	0
	{	Holmes and Bevernex, the bale, contain- ing 45 half-pieces	80	0	0
		the piece	3	14	0
	Jean Fustians		3	7	0
	Milan Fustians		8	0	0
		Fustians,			

		£.	s.	d.
Fustians, vocat.	Naples Fustians, the half-piece, contain- ing seven yards and a half	4	0	0
	the yard	0	10	0
	Naples Fustians, wrought, the half piece, containing seven yards and a half	6	0	0
	the yard	0	16	0
	Osborn Fustians, the piece	4	10	0
	with silk, the yard	0	8	0
	of Weazel, the piece	8	0	0
Fusses of cloves,	the pound	0	3	6

G.

Gadza,	{ without gold or silver, the yard	0	2	8
	{ striped with gold or silver	0	5	0
Galley dishes,	the dozen	0	2	6
Garnets,	{ small, rough, the pound	1	0	0
	{ small or great, cut	3	0	0
Gantlets,	the pair	0	4	0
Garters of silk, French making,	the dozen pair	3	0	0
Gimlets,	the dozen,	0	8	0
	{ of cruel, the groce	2	13	4
	{ of leather	3	6	8
Girdles,	{ of silk, the dozen	2	0	0
	{ of velvet	4	0	0
	{ of woollen	1	12	0
	{ of counterfeit gold and silver	1	0	0
Glasses for windows, vocat.	{ Burgundy, white, the chest	3	15	0
	{ ——— coloured	5	5	0
	{ Normandy, white, the case	1	10	0
	{ ——— coloured	3	15	0
	{ Rhenish, the wey, containing 60 bunches	4	10	0
	{ Muscovy glass, the pound	0	2	0
Drinking Glasses, vocat.	{ Venice, the dozen	0	18	0
	{ Flanders, the hundred	1	5	0
	{ French, the hundred, containing 5 score	0	15	0
	{ Coarse drinking glasses, the dozen	0	3	0
Glasses, vocat.	{ burning glasses	0	3	0
	{ balm glasses, the groce	0	7	6
	{ vials, the hundred, containing five score	0	15	0
	{ watering glasses, the dozen	0	12	0
Looking- glasses, voc.	{ Half-penny ware, the groce	0	8	0
	{ Penny ware	0	16	0
	{ of steel, small, the dozen	0	13	4
	{ of steel, large	1	6	8

		£.	s.	a.
Looking-glasses, voc.	{ of chrystal, small, under Number 6	1	10	0
	{ middle sort, Number 6	3	0	0
	{ small, Number 7, 8, 9, 10	6	0	0
	{ Number 11, 12	45	0	0
Hour-glasses	{ of Flanders, coarse, the groce	3	0	0
	{ the dozen, fine	1	0	0
	{ of Venice	3	0	0
Glas-stone plates for spectacles, rough		1	0	0
Glas plates for looking-glasses unfild,	{ of chrystal, small, under Number 6	1	0	0
	{ ——— Number 6	2	0	0
	{ ——— Number 7, 8, 9, 10	4	0	0
	{ ——— Number 11, 12	30	0	0
Glas pipes	{ small, the pound	0	7	6
	{ great, the hundred weight	7	10	0
All other glas manufactures, except glas beads, per lb.		0	1	6
Glew, the hundred weight		1	0	0
Globes,	{ small the pair	3	0	0
	{ large	6	0	0
	{ of Bruges, or French making, the groce	2	10	0
Gloves,	{ of Canary, Milan, or Venice, unwrought, the dozen pair	1	0	0
	{ ——— wrought with gold or silver	4	0	0
	{ French, wrought with gold or silver	4	0	0
Gloves,	{ of Vandon	0	10	0
	{ of silk knit	2	0	0
	{ of Spanish, plain	0	15	0
	{ Bruges, the pound, Avoirdupois	0	13	4
Gold and silver thread counterfeit, vocat.	Cap	1	0	0
	Copper	0	10	0
	{ Cullen, the mast, containing 2 pounds and a half at 12 ounces	1	6	8
	{ French copper, the mark, containing 8 ounces Avoirdupois	0	5	0
	{ Lyons copper, double gilt.	1	6	8
Gold and silver thread, right, vocat.	{ Venice, Florence, or Milan, the lb. cont. 12 ounces, Venice weight.	3	6	8
	{ French, the mark, containing 11 ounces and a half, Venice weight	2	0	0
Gold foil, the small groce		0	6	8
Gold paper		0	13	4
Grains,	{ French, the pound	0	0	8
	{ Guinea	0	0	8
Grain,	{ or scarlet powder	0	6	8
	{ of Sevil in berries, and grains of Portugal	0	3	4
Grindle-stones, the chalder		1	6	8

Grocery

		£.	s.	d.
Grocery wares, vocat.	Almonds, the hundred weight	6	0	0
	Anniseeds	3	0	0
	Cloves, the pound	0	10	0
	Currants, the hundred weight	6	0	0
	Dates	6	0	0
	Ginger { of the East Indies, the pound	0	3	0
	{ of the West Indies	0	1	4
	Liquorice, the hundred weight	1	10	0
	Mace, the pound	1	0	0
	Nutmegs	0	8	0
	Pepper	0	3	4
	Pepper imported directly from the place } of its growth in English shipping }	0	1	8
	Cinnamon	0	6	8
	Raisins, {	1	10	0
		2	0	0
		1	0	0
		1	0	0
	Figs	1	13	4
	Prunes	0	15	0
	Sugar, {	10	0	0
		15	0	0
		4	0	0
		17	0	0
		2	0	0
		7	6	8
		5	0	0
		1	10	0
	All spicery, except pepper, imported directly from the place of its growth in English shipping, to be rated one third of what is charged in the book.			
	Grograms, Turkey, the yard	0	3	9
	Guns, {	0	5	0
		0	10	0
	Gunpowder, {	5	0	0
		8	0	0

H.

Halberds, {	gilt, the piece	0	13	4
	ungilt	0	3	4
Hammers, {	the dozen	0	4	0
	vocat. horsemens hammers	0	13	4
Handkerchiefs, the dozen		3	0	0
Harness-roses, the thousand		0	1	0
B b z		Harness		

		£.	s.	d.
Harnesse, vocat.	{ Corsets, the piece	1	0	0
	{ Curats	0	12	6
	{ Morians, graven	0	10	0
	{ ——— plain	0	5	0
Harpstrings, the groce		0	5	0
Hatbands		5	0	0
Hats	{ of bever wool, the hat	10	0	0
	{ of Bruges, the dozen	10	0	0
	{ Dutch felts of wool, the piece	1	0	0
	{ Spanish or portugal felts, the dozen	5	0	0
	{ of silk, French	3	0	0
	{ of Venice	3	0	0
	{ of wool, trimmed	3	0	0
Hawks, vocat.	{ Faulcons, the hawk	4	0	0
	{ Goshawks	3	6	0
	{ Jerfaulcons	4	10	0
	{ Jerkins	3	6	8
	{ Lanners	4	0	0
	{ Lannarets	2	0	0
	{ Tassels	2	0	0
Hawks-hoods, the groce		1	6	8
Hair bottoms for sieves, the groce		0	10	0
Hair, voc.	{ Camel's hair, the pound,	0	3	0
	{ Elk's hair for saddles, the hundred weight	0	12	6
Hair, voc.	{ Goat's hair, ordinary, the pound	0	1	2
	{ ——— vocat. Carmentia wool	0	1	2
Headings for barrels, the hundred, containing 6 score		0	6	8
Heath for brushes, the hundred weight		1	0	0
Hemp, voc.	{ short, drest	8	0	0
	{ all other drest hemp	10	0	0
	{ rough hemp	0	13	4
Hides.	{ Buff, the hide	0	10	0
	{ Cow-hides of Barbary and Muscovy	0	2	6
	{ Cow or horse-hides, tanned	0	10	0
	{ in the hair	0	2	6
	{ India hides	0	4	2
	{ Losh hides	0	5	0
	{ All other hides in the hair, or undrest, half custom.			
{ Red or Muscovia hides, tanned		0	6	8
Hilts for swords, the dozen		2	0	0
Honey,	{ the barrel	2	0	0
	{ the ton	12	0	0
Hoops,	{ of iron for pipes, the hundred weight	1	6	8
	{ for coopers, the thousand	1	6	8
Hops, the hundred weight		15	0	0
Horses and mares, the horse, &c.		10	0	0
Hose of cruel, vocat Mantua, the pair		0	10	0

I

	£.	s.	d.
Jet, the pound	0	3	4
Jews trumps, the groce	0	10	0
Imperlings, the dozen	1	10	0
Ink for printers, the hundred weight	2	0	0
Ink-horns { the groce	3	0	0
{ of brass, the dozen	0	12	0
Inkle, { unwrought, the pound	0	2	6
{ wrought, the dozen pounds	8	0	0
{ rolls, the dozen pieces, containing 36 yards	6	0	0
Instruments for { Bullet-screws, the dozen	0	4	0
barbers and { Incision sheers	0	5	0
chirurgeons, { Setts, the bundle, containing 16	0	2	0
vocat. { Paices, the dozen	0	5	0
{ Plulicanes	0	5	0
{ Trepans	0	10	0
Iron, { Amys, Spanish, Spruce, and Sweedish, the ton	7	0	0
{ Backs for chimneys, small, the piece	0	6	8
{ ——— large	0	13	4
{ Bands for kettles, the hundred weight	2	0	0
{ Fire-irons, the groce	0	10	0
{ Hoops, the hundred weight	1	6	8
{ Stones, the piece	5	0	0
Juice of lemons, the pipe,	4	0	0
Ivory, the pound	0	10	0

K.

Key-knops, the groce	1	0	0
Knives { Coarse knives, the dicker, containing ten knives	0	3	0
{ Butchers knives	0	3	0
{ Carving knives, the dozen	3	0	0
{ Cullen knives, the groce	8	0	0
{ French knives, the groce	4	0	0
{ Glovers knives, the bundle, cont. six knives	1	10	0
{ Pen-knives, the groce, containing 12 dozen	1	10	0
{ Sker knives, the dicker, containing ten knives	0	3	0
{ Stock knives, ungilt, the dozen	4	0	0
{ ——— gilt	6	0	0

L.

Lace, { Bone-lace, the dozen yards	4	0	0
vocat. { Britain-lace, the groce	6	0	0
{ Cruel-lace	8	0	0
{ Gold and silver, the pound, Troy	12	0	0
		Lace,	

			£.	s.	d.
Lace, vocat.	{	Pomet-lace, the groce	2	0	0
		Purl	1	0	0
		Silk bone-lace, the pound	40	0	0
		Silk lace of other sorts	10	0	0
Ladles, melting,		the hundred weight	2	0	0
Lapis Magnate false,		the pound	0	3	0
Lattin, {	{	black, the hundred weight	2	0	0
vocat. {		shaven	3	6	8
Lead ore,		the ton	4	0	0
Lemons pickled,		the pipe	4	0	0
Lemon water,	{	the ton	10	13	4
		the gallon	0	0	11
Leather, vocat.	{	Basil Leather, the dozen	20	0	0
		Spanish	5	0	0
		Spruce, or Dantzick	2	0	0
		Hangings, gilt, the piece	4	0	0
		Leather for masks, the pound	0	6	8
		Turkey and East-India Cordevant,	2	0	0
		the dozen			
Leaves of gold,		the hundred, containing five score	0	5	0
Lewers for hawks,		the piece	0	1	4
Limes for dyers,		the barrel	0	5	0
Lines of Hamborough for ships,		the piece	0	0	6
Linseed,		the bushel,	0	5	0
Lins,		the dozen	0	10	0
Linen, Cloth, or	{	Callicoes, the piece	1	10	0
		Cambrick, the half piece, containining six	1	0	0
		ells and a half			
		Dutch Barras, and Hefsens Can-	3	10	0
		vas, the hundred ells, con-			
		taining six score	6	0	0
		French Canvas and Line, narrow			
		Broad, for tabling, being an	15	0	0
		ell and half quarter, and up-			
		wards	2	10	0
		Packing Canvas, Gutings, and			
		Spruce	1	0	0
		Poldavies, the bolt, containing			
		twenty-eight ells	0	15	0
		Spruce, Elling, or Quinsborough			
Stript, or tufted with thread,	2	0	0		
the piece, containing fifteen					
yards	4	0	0		
Stript, tufted, or quilted with silk					
Stript with copper	4	0	0		
Vandalose, or Vitery, the hun-	5	0	0		
dred ells, containing six					
score					
					Linen,

Rates of Merchandize.

359

		£.	s.	d.
Linen, Cloth, or	Canvas, vocat. {			
	Working for cushions, narrow	3	0	0
	Working, broad	5	0	0
	Working Canvas, of the broadest	6	0	0
	Damask, {			
	Tabling of Holland, the yard	1	0	0
	Toweling	0	7	0
	Tabling of Silesia	0	4	0
	Toweling	0	1	4
	Diaper, {			
	Tabling of Holland	0	9	0
	Toweling	0	3	0
	Napkins of Holland, the dozen	1	16	0
	Tabling of Silesia, the yard	0	3	4
	Toweling and napkining	0	1	4
	the half piece, containing six ells and an half	3	0	0
	Lawns, {			
	voc. French, the piece,	1	10	0
	voc. Silesia, the piece, containing between four and eight yards	0	10	0
	Flanders and Holland cloth, {			
	Flemish, the ell			
	Gentish			
	Isingham			
	Overisils			
	Roufe			
	Brabant	0	5	0
	Embden			
	Freeze			
	Brown Holland			
	Bag Holland			
	British, the hundred ells, five score	6	13	4
	Cowfield cloth, or plots, the ell	0	1	8
	Drilling and Packduck, the 100 ells, 6 score	2	0	0
	Elbing or Dantzick cloth, double ploy, the ell	0	1	8
	Hamborough and Silesia cloth, broad, the hundred ells, containing 120	10	0	0
	Hamborough, narrow	8	0	0
	Hinderlands, brown, Middlegood, Head- lake, and Muscovia linen, narrow	2	13	4
	Lockrams, treager, greft, or narrow; or Dowlas, the piece, cont. 106 ells	5	0	0
	Minsters, the roll, containing 1500 ells	56	0	0
	Ozenbrigs	60	0	0
	Soultwich, the hundred ells, cont. six score	4	0	0
	Narrow cloth of High-Dutch-land, and the east country, not otherwise rated	4	0	0
	Linen of Germany, not above three quarters and a half broad, shall be accounted narrow; and all above that breadth shall be accounted broad.			

Linen,

		£.	s.	d.
Linen,	{ Straßborough, or Hamborough linen, the ell	}	0	3 0
	{ Linen shall pay one moiety above what is before rated; for which additional duty the importer, giving security at the Custom-house, shall have twelve months time for payment; or, in case such importer shall pay ready money, he shall have 10 per cent. abated; and if the linens be exported within twelve months, the said duty shall be repaid.			
Lockets.	or chapes for daggers, the groce		0	13 4
Locks, vocat.	{ Hanging locks, small		1	10 0
	{ large		3	0 0
Lutes,	{ Cullen making, with cases, the dozen		8	0 0
	{ Venice		24	0 0
Lustrings, vocat.	{ Catlings, the groce		0	2 8
	{ Minikings		1	6 8

M.

Magnus,	the hundred weight		1	0 0
Maps,	printed, the ream		4	0 0
Masks of	{ velvet, the dozen		3	0 0
	{ fatten		2	0 0
Masts,	{ small, the mast		0	3 4
	{ middle		0	10 0
	{ great		1	0 0
Match,	the pound		0	0 2
Mats of Russia,	the mat		0	0 6
Meal of wheat, or rye,	the last cont. 12 barrels		3	0 0
Medlars,	the basket, containing two bushels		0	10 0
Melasses of rameals,	the ton		13	6 8
Messelanes,	{ the piece, containing thirty yards	}	9	0 0
	{ the single piece, containing fourteen yards of Silesia		1	16 0
Methlegin,	the hoghead		2	0 0
Mithridate,	the pound		1	0 0
Mocado Ends,	the dozen pounds		4	0 0
Mortars and Pestles of brass,	the pound		0	1 4
Mustard-feed,	the hundred weight		0	10 0
Mittins of Wadmol,	the dozen pair		0	9 0

N.

N.

		L.	s.	d.
Nails, vocat.	Chair-nails, the thousand	0	13	4
	Copper Nails, the sum containing ten thousand	0	13	4
	Rose-Nails and Sadlers Nails	0	13	4
	Head-Nails, the barrel	8	0	0
	Harnes-Nails, the sum	1	0	0
	Small Nails, the half barrel	8	0	0
	Sprig-Nails, the sum	0	6	8
	Tenter-hooks, the thousand	0	5	0
Napkins, French, the dozen		0	12	0
Nickerchers of Flanders		6	0	0
Needles,	the dozen thousand	3	0	0
	vocat. Pack-Needles, the thousand	0	13	4
	vocat. Sail-Needles	0	6	8
Nutmegs, pickled, the piece		0	0	4
Nuts,	Small Nuts, the barrel	0	10	0
	voc. Wall-Nuts	0	6	8

O.

Oakham, the hundred weight		0	10	0
Oaker, the barrel		1	6	8
Oars,	the piece	0	1	0
	the hundred, containing fix score	6	0	0
Oil, voc.	Rape and Linseed, the ton	70	0	0
	Sevil, Majorca, Minorca, Apuglia, and Portugal Oil	32	0	0
	Provence Oil	32	0	0
	Sallad Oil	63	0	0
	of Greenland	8	0	0
	of Newfoundland, and the like fort	6	0	0
Olives, the hogthead		8	0	0
Onions,	the barrel	0	3	4
	the hundred bunches	0	16	8
	Seed, the hundred weight	4	0	0
Oranges and Lemons, the thousand		1	0	0
Orsedew, the dozen pound		1	6	8

P.

Packthread,	in skeins, the hundred weight	3	0	0
	voc. Bottom Thread	2	10	0

C c

Pans,

		£.	s.	a.
Pans, voc.	{ Dripping-pans, the hundred weight	3	0	0
	{ Frying-pans	3	0	0
	{ Warming-pans, the dozen	3	0	0
Paper, voc.	{ blew, the ream	0	10	0
	{ brown, the bundle	0	3	0
	{ Cap, the ream	0	7	6
	{ Demy	0	12	0
	{ ordinary Printing and Copy	0	4	6
	{ painted	3	13	4
	{ Pressing, the hundred leaves	0	13	4
	{ Rochel, as large as Demy, the ream	0	9	0
Parchment,	{ Royal	1	0	0
	{ the dozen, containing twelve sheets	0	7	0
	{ the roll, containing six dozen	2	2	0
Paste of Jene, the pound		0	7	6
Pears, or Apples, dried, the barrel		0	10	0
Penners, the groce		2	0	0
Petticoats of silk, the piece		3	0	0
Percer-bitts, the groce		1	0	0
Pheasants,	{ the dozen, from Christmas to Midsummer	4	0	0
	{ Pouts, from Midsummer to Christmas	2	10	0
Pike-heads, the piece		0	0	6
Pikes,	{ without heads	0	3	6
	{ with heads	0	4	0
Pins, the dozen thousand		2	10	0
Pincers and pliers, the dozen		0	4	0
Pintadoes, the piece		0	6	8
Pipe or Hoghead Staves, the hundred cont. six score		0	6	8
Pipes for Tabors, the dozen		0	4	0
Pipes for children, the groce		0	8	0
Pitch,	{ small band, the last, containing 12 barrels	2	10	0
	{ great band	2	10	0
Plaister of Paris, the mount, cont. 3000 weight		2	0	0
Plane Irons, the dozen		0	2	0
Planks of Ireland, the hundred foot, cont. five score		0	12	6
Plate,	{ Silver, the ounce	0	4	0
	{ parcel gilt	0	4	6
	{ gilt	0	5	0
Plates, voc.	{ single, the hundred plates	0	13	4
	{ double	1	6	8
	{ Harnefs-plates, or Iron Doubles, the plate	0	1	0
Playing Tables of walnut-tree, the pair		0	6	8
Points,	{ of thread, the great groce	1	0	0
	{ of Capiton	2	0	0
	{ of fine silk, the groce	1	10	0
Pomice-stones, the ton		0	13	4
Pomegranates, the thousand		2	0	0

Pork,

Rates of Merchandize.

363

	£.	s.	d.
Pork, { the side	0	5	0
Pork, { the ton	6	0	0
Potatoes, the hundred weight	0	16	8
{ of earth, covered, the hundred, containing five score	1	6	8
{ uncovered, the hundred, containing a gallon to every cast	2	10	0
Pots, { voc. Gallipots, the hundred, containing five score	2	0	0
{ voc. Melting-pots for goldsmiths, the hundred	0	3	0
{ of iron, French, the dozen	3	0	0
{ Flemish	3	0	0
Pullies, { of iron, the groce	5	0	0
{ of brass, the dozen	0	4	0
{ of wood, the groce	1	0	0
Punsons and gravers, the hundred weight	5	12	0

Q.

Quails, the dozen	0	8	0
Quills, vocat. goose-quills, the thousand	0	2	0
Quilts, { French, the dozen	4	16	0
{ of callicoe, the piece	2	0	0
{ of silk	6	13	4
Quinces, the hundred	0	8	0

R.

Rackets, the piece	0	0	8
Rape-feed, the quarter	1	0	0
Rashes, { Bruges, or leaden the single piece, containing fifteen yards	4	0	0
vocat. { — the double piece, cont. 2 single pieces	7	0	0
{ Cloth Rashes, the piece	18	0	0
Rattles, { for children, the groce	1	6	8
{ with bells, the dozen	0	6	0
Razors, the dicker, containing ten	1	0	0
Recorders, the set, containing 5 recorders	1	0	0
Ribband of silk, the pound	4	0	0
Rice, the hundred weight	1	6	8
Rosin, the hundred weight	0	6	8
Rugs, { Irish, the piece	0	13	4
vocat. { Polish,	1	0	0
Rims for sieves, the groce	0	6	0

		L.	s.	d.
Rings, vocat.	{ for keys	0	9	0
	{ for curtains, the pound	0	1	4
	{ of wire, the groce	0	4	0
	{ of brass, copper, or St. Martin's, gilt	1	0	0
	{ small, the box, containing two groce	0	10	0
	{ of hair, the groce	0	3	0
S.				
Sack- cloth,	{ the hundred ells, containing six score	8	0	0
	{ of single thread, the piece, containing 15 yards	0	10	0
	{ with white thread, the yard	0	1	0
	{ with silk	0	1	6
Saddles of steel, the piece		1	0	0
Saffron, the pound		1	10	0
Salt, vocat,	{ white, or Spanish the bushel	0	0	8
	{ bay, or French	0	0	6
Salt-petre, the hundred weight		1	0	0
Saws, vocat.	{ Hand-saws, the dozen	0	6	8
	{ Tenant-saws	0	13	4
	{ Whip-saws, the piece	0	5	0
	{ Leg-saws	0	6	8
Says, voc.	{ double says, the piece, containing 15 yards	9	0	0
	{ double says, the yard	0	12	0
	{ milled says, the piece	6	0	0
	{ Hounscot says, the piece, containing 24 yards	6	0	0
Scamoty, the yard		0	1	0
Scissars, the groce		3	0	0
Sea holly-roots, the hundred weight		1	0	0
Sea morse teeth, the pound		0	3	0
Serge,	{ of Athens, the yard	0	2	0
	{ of Florence	1	0	0
Shears,	{ for shear-men, new, the pair	1	0	0
	{ — old	0	13	4
	{ for glovers	0	1	0
	{ for sempsters, the dozen	0	3	4
	{ vocat. forceps, the groce	0	13	4
	{ for taylors, the dozen	0	16	0
Shubs of Calabar, the piece		2	0	0
Shruff, or old brass		3	0	0
Silk, voc.	{ Bruges, the pound	2	0	0
	{ Ferret, or Floret	1	0	0
	{ Fillozell, or Paris	0	15	0
	{ Granado, { black	3	0	0
	{ in colours	4	0	0
	{ Naples, { black	2	0	0
	{ in colours	2	10	0
Silk,				

		£.	s.	d.
Silk, voc.	Orgazine, and all thrown filk in the gum	0	16	8
	Pole and Spanish	2	0	0
	raw China, the pound, containing 24 ounces	1	0	0
	raw, Morea	0	10	0
	raw, long, except China	0	10	0
	raw, short, or Capiton	0	6	8
	Sattin, the pound, containing 16 ounces	2	0	0
	Sleeve, coarse	0	13	4
	Sleeve, fine, or Naples sleeve	2	13	4
	Silk nubs, or hufks, the pound, cont. 21 ounces	0	2	0
	Thrown filk dyed, the pound, cont. 16 ounces	5	0	0
	imported in ships English built, directly from the East Indies	0	15	0
	of the manufacture of Italy, imported from thence in English ships	1	13	4
	imported from the East Indies in other bottoms	1	0	0
Silk, wrought	from Italy	2	0	0
	from any other parts	2	0	0
	Foreign filks, wrought, exported within one year from the importation, shall have two thirds repaid at the Custom-house.			
	All filks wrought shall pay one moiety above what they stand rated, for which the importer, giving security, shall have 12 months for payment; or in case such importer shall pay ready money, he shall have ten per cent. abated; and if the said filks be exported within 12 months, the said duty shall be returned.			
	Buck-skins, { in the hair, the skin	0	2	6
	{ drest	0	5	0
	Calf-skins, { of Ireland, raw, the dozen	0	6	8
	{ tanned	0	10	0
	Cordivant of Turkey or East India	1	6	8
	Dog-fish for fletchers	0	0	6
Skins, vocat.	Fox-skins drest	0	16	0
	Gold skins, the skin	0	0	6
	Goat-skins { of Barbary, or the east coun- try, in the hair, the dozen	1	0	0
	{ of Ireland	0	6	8
	{ tanned	2	0	0
	Husse-skins for fletchers, the skin	0	0	6
	Kid-skins, { in the hair, the hundred, con- taining five score	1	0	0
	{ drest	2	0	0
	Portugal skins, the dozen	2	0	0
	Seal-skins, the skin	0	1	8
				Skins,

	£.	s.	d.
Skins, { Shamway, the dozen	1	6	8
vocat. { Sheep-skins in the wool, the skin	0	0	3
{ Spanish, Seville, or Cordivant, the dozen	5	0	0
{ Spruce skins, tawed	2	0	0
Skeets for whitsters, the skeet	0	1	0
Slip, the barrel	0	3	4
Smalts, the pound	0	1	6
Snuffers, the dozen	0	6	8
Sope, { Castile or Venice, the hundred weight	3	0	0
vocat. { Flemish, the barrel	4	0	0
Spangles of copper, the thousand	0	1	0
Spars, small, the hundred, containing six score	1	0	0
Spectacles without cases, the groce	1	0	0
Spoons of horn	0	16	0
Standishes, { of wood, the dozen	0	4	0
{ of brass	0	12	0
{ covered with leather, gilt, the piece	0	6	8
vocat. pocket standishes, the dozen	2	0	0
Starch, white, the hundred weight	5	0	0
Staves, { Barrel staves, the hundred, containing six score	0	3	4
vocat. { Firkin staves	0	2	0
Steel, { long steel, wisp steel, the hundred weight	1	10	0
vocat. { gad steel, the half barrel	10	0	0
Stockings of wadmoll, the pair	0	1	0
Stone birds, or whistles, the groce	0	4	0
{ Blood-stones, the pound	0	15	0
{ Cane-stones, the ton	0	15	0
Stones, { Dog-stones, the last, containing three pair	39	0	0
vocat. { Mill-stones, the piece	10	0	0
{ Quern-stones, small, the last	2	5	0
{ — large	4	10	0
{ Slick stones, the hundred, containing 5 score	0	15	0
Sturgeon, the firkin	1	10	0
Sturgeon, the keg	0	15	0
Stuffs made of, or mixed with wool, per yard	1	5	0
Succad, the pound	0	3	0
Sword-blades, { of Venice, Turkey, or fine blades, }	1	10	0
{ the dozen	1	0	0
{ coarse, Flanders			

T.

Table-books { coarse the dozen	0	10	0
{ fine	1	0	0
Tables, vocat. playing tables, coarse, the pair	0	5	0
Tacks of iron, the thousand	0	6	8
Tallow, the hundred weight	0	16	8
Tannets of cruel, the yard	0	6	0
Tapistry,			

Rates of Merchandize.

367

		£.	s.	d.
Tapistry,	{ with hair, the Flemish ell	0	2	8
	{ with caddas	0	8	0
	{ with silk	0	13	4
	{ with gold or silver	8	0	0
	{ with wool	0	4	0
Tarras,	the barrel	0	6	8
Tar,	{ small band, the last, containing 12 barrels	2	10	0
	{ great band	2	10	0
Tazels,	the thousand	0	5	0
Thimbles,	the thousand	3	0	0
Thread	Bruges, the dozen pound	2	5	0
	Crofbow, the hundred pound	3	6	8
	Lions or Paris thread, the bale, containing one hundred bolts	30	0	0
	Outnal thread, the dozen pounds	3	0	0
	Piecing thread	4	0	0
	Sifters thread, the pound	0	15	0
	Whited brown, the dozen pounds	4	0	0
Thrumbs,	{ of linen or fustian the pound	0	0	6
	{ of woollen	0	1	0
Tikes, vocat.	{ Brazile tikes and counterfeit, the tike	1	10	0
	{ Turnal	1	10	0
Ticking of the east country,	the yard	0	0	8
Tikes of ftoad,	the tike	1	10	0
Tinfoil,	the groce	0	3	4
Tinglafs	the hundred weight	3	0	0
Tinfel,	{ with copper, the yard	0	5	0
	{ with right gold and silver	0	10	0
Tinshore,	the groce	0	1	6
Tobacco, vocat.	{ Spanish and Brazil, or any not English plantations, the pound	0	10	0
	Spanish, or Brazil	0	10	0
	St. Christopher's, Barbadoes, or any of Caribbee islands, Virginia, and Summer islands, tobacco, the pound	1	8	0
	All tobacco of the English plantation shall pay over and above by the importer one penny per pound, at nine months after importation. Provided that tobacco exported within 12 months, shall have this duty repaid. And in case any importer shall desire to pay ready money, he shall have an abatement of ten per cent.			
Tools, vocat.	Carving-tools, the groce	1	0	0
Tow,	the hundred weight	0	10	0
Trays of wood,	the shock, containing fixty trays	1	0	0
Treacle,	{ of Flanders, the barrel	4	0	0
	{ of Jean, the pound	0	1	4
Trenchers,				

	£.	s.	d.
Trenchers, { white, the groce	0	4	0
	0	12	0
Treen Nails, the thousand	0	10	0
Trunnels, the thousand	0	10	0
Tweezes of France, the dozen	3	0	0
Twine, { of Hamburgh, the pound,	0	0	6
	2	10	0
Twist for band-strings, the dozen knots	0	10	0

V.

Verditor, the hundred weight	1	6	8
Verders of tapistry, with hair, the Flemish ell	0	2	0
Vellum for table-books, the skin	0	10	0
Viols, the piece	0	13	4
Vice-hasps, the dozen	0	2	0
Vice-tongs, or Hand-vices, the dozen	0	12	0
Vinegar, the ton	5	0	0
Vizards, the dozen	1	4	0

W.

Wadmoll, the yard	0	0	9
Wainscots, the hundred, containing six score	10	0	0
Wax, { the hundred weight	2	0	0
	0	3	4
Whale fins of foreign fishing, the ton	100	0	0
Whet-stones, the hundred, cont. five score	0	16	8
Whip-cord, the pound	0	0	8
Whistles, Cocks, or Bellows, the groce	1	4	0
Woad, voc. { Islands, or Green Woad, the ton	15	0	0
	1	13	4
Worsted, { St. Omer's, narrow, the piece	1	0	0
	2	0	0
Woad, voc. { Tholose Woad, the hundred weight	1	13	4
	2	0	0
Wood, vocat. { Box-wood for combs, the thousand	1	13	4
	2	0	0
	0	0	3
	0	13	4
	1	5	0
	0	13	0
Wool, vocat. { Bever-wool			Free
	0	0	4
			Free
			Wool,

		£.	s.	d.
Wool, vocat.	{ Estridge Wool. imported in English ships			Free
	{ Irish Wool, combed			Free
	{ uncombed			Free
	{ Lamb's Wool			Free
	{ Polonia Wool			Free
	{ Spanish Wool			Free
	{ Spanish Felt wool			Free
	{ Red Wool			Free
Wrest for virginals, the groce		1	4	0
Wyer, vocat.	{ Dagger and Quartern Wyer, the pound	0	3	4
	{ Iron Wyer, the hundred weight	7	10	0
	{ Lattin Wyer	6	13	4
	{ Steel Wyer, the pound	0	3	0
	{ Strasborough Wyer	0	3	4
	{ Virginal Wyer	0	5	0
Wine Lees, the ton		4	0	0

Y.

Yarn, voc.	{ Cable-yarn, the hundred weight	0	13	4
	{ Camel, or Mohair-yarn, the pound	0	2	6
	{ Cotton-yarn	0	1	0
	{ Grograin-yarn	0	3	0
	{ Irish Yarn, the pack, cont. 400 wt. at six score pounds the hundred	5	0	0
	{ Raw Linen Yarn, Dutch, the pound	0	1	0
	{ French, the pound	0	1	0
	{ Sail-yarn	0	0	6
	{ Spruce, or Muscovia Yarn, the hundred weight	2	13	4
	{ Woollen, or Bay Yarn, the hundred weight	3	6	8

All merchants, strangers, bringing in wines, are to pay thirty shillings in the ton over and above the rates which the native pays, including twenty shillings the ton formerly paid by the name of Southampton duties, for Muscadels, Malmsies, and all other wines of the Levant.

For which wines, the stranger is also to pay, to the town of Southampton, for every butt, or pipe, ten shillings.

Moreover, the stranger is to pay the ancient duty of butlerage, which is two shillings upon every ton.

* * Note. That wines landed in the out ports, and afterwards brought in the port of London by certificate, shall pay so much more custom as they paid short of the duty due in the port of London.

R A T E S O U T W A R D S.

BY stat. 8 Geo. I. cap. 15. sect. 7. all duties payable to his majesty, upon exportation of goods of the product or manufacture of Great-Britain, shall cease, upon the conditions mentioned in the act, except the goods hereafter mentioned, which are rated as follows; viz.

A LLOM, the hundred weight	1	0	0
Lead, the fodder, containing twenty hundred weight	20	0	0
Lead ore	0	0	0
Tin, charged by 8 W. III. cap. 34	0	0	0
Leather, tanned, rated by 20 Car. II. cap. 5	0	0	0
Copperas	0	0	0
Coals, vocat sea-coals, charged by 9 Ann. cap. 6	0	0	0
Wool-cards, new, the dozen	0	10	0
old	0	6	0
White woollen cloths, charged by 6 Ann. cap. 8	0	0	0
Lapis Calaminaris	0	0	0
Skins of all sorts; viz. Calve-skins of thirty-six pounds weight	2	10	0
{ tawed and dyed, the hundred, cont. 120	1	0	0
Coney-skins, { Grey Stag	0	10	0
{ Grey seasoned	1	0	0
{ Grey tawed	0	13	4
{ Black	2	13	4
Kid-skins, { in the hair, five score	0	10	0
{ dressed	0	13	4
{ voc. Morkins, untawed, the hundred, containing six score	0	16	8
Lamb-skins, { tawed, with the wool	0	16	8
{ white or black, untawed	1	6	8
{ tawed, with the wool	1	10	0
Otter-skins, { raw, the piece,	0	1	0
{ tawed	0	1	4
{ wombs, the mantle	0	10	0
Sheep and { tawed with the wool, six score	3	0	0
Lamb-skins, { Pelts, the hundred, containing five score	3	6	8
Rabbit-skins, black	0	15	0
Hare-skins, the piece	0	0	3
Cat-skins, the hundred	1	6	8
Fox-skins, the piece	0	0	8
Swan-skins,	0	2	6
Dog-skins, the dozen	0	2	6
			Elk-

Rates of Merchandize. 371

	L.	s.	d.
Elk-skins, the piece, raw	1	0	0
Wolf-skins, tawed	0	6	0
Badger-Skins	0	1	0
Squirrel-Skins, the thousand	2	10	0
Glew, the hundred weight	0	16	8
Coney-hair, the pound	0	6	0
Hare's wool	0	0	0
Hair, vocat. Harts-hair, the hundred weight	1	12	0
Horse-hair	6	0	0
Ox or Cow-hair	2	0	0
Horses, as by 22 Car. II. cap. 13	0	0	0
Litharge of Lead, the hundred weight	0	4	0



R U L E S

F O R T H E

Advancement of Trade, &c.

I.

EVERY merchant shall have liberty to break bulk in any port, and pay custom for no more than he shall enter and land, provided that the master of such ship make declaration upon oath, before two principal officers of the port of the content of his lading: and shall declare upon oath, before the customer, collector, comptroller, or surveyor, or two of them, at the next port where his ship shall arrive, the quantity and quality of the goods landed at the other port, and to whom they did belong.

II.

SUCH merchant as shall export any foreign goods (except wine, currans, and wrought silk) shall be repaid, the one moiety of the subsidy which was paid at the first importation, so as proof be made by certificate from the officers of the due entry and payment of the customs inwards, together with the oath of the merchants, and the name of his majesty's

jefty's searcher, testifying the shipping thereof. After which, the moiety of the subsidy first paid, shall be repaid within one month after demand; as also the whole additional duty of silk, linen, and tobacco.

III.

IF any agreement shall be made (except by consent of parliament) with any merchant-strangers, for foreign goods to be brought into any port, and to be exported again, by way of composition; all other merchants, his majesty's subjects, shall be admitted into the same composition.

IV.

EVERY merchant, as well English as stranger, that shall export wines that have paid the duties inwards, shall have repaid all the duties paid (except to the English man twenty shillings the ton, and except to the stranger twenty-five shillings the ton) upon proof of the due entry and payment of the tonnage, and of the shipping thereof.

V.

IF any merchant shall export Spanish or foreign wools, he shall have liberty so to do, with this condition, that such wool be not exported in any other than English shipping.

VI.

EVERY merchant which shall export currans, shall have repaid all the customs paid inwards, (except eighteen pence for every hundred weight to the English, and two and twenty pence half penny to the stranger) upon proof of the due entry and
D d 3
payment

payment of the custom inwards, and of the shipping thereof.

VII.

IF any merchant, having paid all the duties inwards, and, in regard of bad sales, shall be enforced to keep the goods in his hands after the time elapsed, he is to be permitted to ship the same out without payment of subsidy, upon proof that the same was duly entered. &c.

VIII.

EVERY merchant bringing in wines, shall be allowed twelve *per cent.* for leakage.

IX.

EVERY hogshead of wine which shall be run out, and not full seven inches left therein, and every butt or pipe not above nine inches, shall be accounted for outs, and the merchant to pay no subsidy for the same.

XII.

MERCHANTS, strangers, shall pay for all goods, as well inwards as outwards, rated to pay the subsidy of poundage, three pence in the pound, or any other duty payable by *Charta Mercatoria*, besides the subsidy. See 25 Car. II. c. 6.

XIII.

MERCHANTS trading into the port of London, have liberty to lade and unlade their goods at any the lawful keys between the Tower of London and London-bridge, and between sun-rising and sun-setting, from the tenth of September to the tenth of March ;

March ; and between six in the morning and six in the evening, from the tenth of March to the tenth of September ; giving notice to the officers : and such officer as shall refuse to be present, shall forfeit five pounds ; one moiety to the king, and the other moiety to the party grieved.

XIV.

THE merchants of York, Kingston upon Hull, and Newcastle upon Tine, shall be allowed, free of custom, two of the Northern cloths, and kerseys, in ten, to be shipped in those ports in the names of Double Wrappers.

XV.

THE merchants of Exeter, and other western parts, shall be allowed, free of subsidy, one perpetuano in ten for a wrapper, and three Devon dozens in twenty-four, wrappers, the same, to be shipped out of the ports of Exeter, Plymouth, Dartmouth, Barnstable, Lyme-Regis, or the members thereof.

XVI.

ALL merchants, transporting any sort of woollen, shall be allowed one in two for a wrapper.

XVII.

EVERY merchant shall be allowed, upon all other goods appointed to pay poundage, to be imported, five in the hundred of the poundage.

XVIII.

THE officers who sit above in the custom-house of London, shall attend their several places from

nine to twelve in the fore-noon; and one officer, or clerk shall attend with the book in the afternoon during such time as the officers are appointed to wait at the water-side. All other, the officers of the out-ports, shall attend every day in the Custom-house, between the hours of nine and twelve in the morning, and two and four in the afternoon.

XIX.

EVERY merchant, making an entry of goods, shall be dispatched in such order as he cometh; and if any officer shall, for favour or reward, put any merchant by his turn, or delay any person duly attending and making his entries, to draw any other reward from him than is limited in the act, if the master-officer be faulty herein, he shall, upon complaint to the chief officers, be strictly admonished; but if the clerk be found faulty, he shall be presently discharged.

XX.

THE lord-mayor, commonalty, and citizens of the city of London, for the offices of package, scavage, baleage, or portage of goods of aliens, or their sons, or unfreemen, may receive the rates usually taken.

XXI.

ALL ancient duties lawfully taken by any city or town corporate, under the name of town custom, for the maintenance of bridges, keys, or the like, may be received as formerly.

XXII.

THE officers of Gravesend, having power to visit any ship outward bound, shall not, without just cause,

cause, detain any such ship, under colour of searching, above three tides, under pain of loss of their office, and rendering damage to the merchant and owner of the ship. And the officer in any of the out-ports shall not, without just cause, detain any such ship above one tide after the ship is fully laden and ready to sail, under pain of loss of office and rendering damage.

XXIII.

ALL timber in balks, of eight inches square, or upwards, that shall be imported, shall be rated, the foot square, three pence for the value thereof; and, according to that rule, shall pay, for subsidy, twelve pence in the pound; and all under eight inches square, and above five inches square, shall pay, for the subsidy, according to the rates mentioned in this book for middle balks; and all of five inches square, or under, shall pay according to the rate of small balks.

XXIV.

NO officer belonging to any custom-house shall receive any other fee than such as shall be established by the Commons in parliament: if any officer shall offend, contrary to this order, he shall forfeit his office, and be incapable of any office in the Custom-house.

XXV.

ALL fees appointed to be paid to the customer, comptroller, surveyor, or surveyor-general, in the port of London, for any cocket outwards, shall be paid in one sum to that officer from whom the merchant is to have his cocket above in the Custom-house; and after the merchant hath paid his custom and subsidy, and other duties, above in the Custom-house, he is to keep his own cocket until he shall ship

ship out his goods, when he is to deliver the same to the searcher, with the mark and number of his goods.

XXVII.

PRISAGE of wines, the duty called butlerage, and the duty of twelve pence upon every chaldron of sea-coal exported from Newcastle to any other port of this realm, shall be continued.

HARBOTTLE GRIMSTONE, baronet,
Speaker of the House of Commons.

10. Stat. 12 Car. II. cap. 19. sect. 1. If any person shall cause goods, for which custom or duties are payable by the act of tonnage and poundage, cap. 4, to be landed or conveyed away without entry made; and the customer, or collector, or his deputy, agreed with; upon oath thereof made before the lord-treasurer, or any of the barons of the Exchequer, or chief-magistrate of the place where the offence shall be committed, or the place next adjoining; it shall be lawful for the lord treasurer, barons or chief magistrate, to issue a warrant to any persons, enabling them, with the assistance of a sheriff, justice of peace, or constable, to enter into any house in the day time, where such goods are suspected to be concealed; and, in case of resistance, to break open such houses, and seize the goods concealed; and all officers and ministers of justice are required to be assisting.

11. Sect. 2. Provided that no house be entered, unless it be within one month after the offence supposed to be committed.

12. Sect. 3. This act shall continue to the end of the first session of the next parliament.

Continued, and made perpetual, by 9 Ann. cap. 6, sect. 2; and 3 Geo. I. cap. 7.

13. Sect. 4. If the information whereupon any house shall be searched shall prove false, the party injured shall recover his damages and costs against the informer by action of trespass.

Confirmed by 13 Car. II. cap. 7.

14. Stat. 13 and 14 Car. II. cap. 11. sect. 2. For preventing frauds in the customs, no ship arriving from beyond sea, shall be above three days coming from Gravesend to the place of her discharge in the Thames, without touching at any wharf, key, or place adjoining to either shore between Gravesend and Chester's Key (unless hindered by contrary winds, draught of water, or other just impediment, to be allowed by the persons appointed for managing the customs, the collectors inward, or other principal officers); and then, or before, the master, or purser, shall make entry upon oath of the burthen, contents and lading, of such ship, with the marks, numbers, qualities and contents, of every parcel of goods, to the best of his knowledge; also where she took in her lading; of what country built; how manned; who was master during the voyage; and, who are owners: and in all out-ports, or members, to come directly up to the place of unlading, as the condition of the port requires, and making entries, as aforesaid, upon the penalty of one hundred pounds.

15. Sect. 3. No captain, purser, or other person, taking charge of any ship bound for ports beyond sea, whether the ship shall belong to the king, or any foreign state, or otherwise, shall suffer to be taken into such ship any English goods to be exported, until such captain, &c. shall have entered such ship in the book of the commissioners, customer, or collector, and comptroller outwards of such port, together with the name of such captain, the burthen of such ship, the number of guns and ammunition, and to what port she intends to sail; and, before she shall depart, shall deliver unto the persons appointed for managing the customs, the customer, or collector

tor, and comptroller, a content of the names of every person that shall have put on board any such goods, together with the marks and numbers; and shall publicly in the Custom house, upon oath, to the best of his knowledge, answer such questions as shall be demanded concerning such goods, upon pain of one hundred pounds; and no such captain, &c. of any ship of war, wherein goods shall have been laded, or brought from beyond sea, shall suffer to be discharged into any lighter, or laid on land, any goods, before such captain, &c. shall have declared under his hand, to the persons appointed for managing the customs, the customer or collector, and comptroller inwards, the names of every lader of goods, together with the number and marks, and the quantity and quality of every parcel, to the best of his knowledge; and shall have answered, upon such oath, questions concerning such goods as shall be publicly administered in the Custom-house; and shall be liable to all searchers, and other rules, which merchant's ships are subject unto by the usage of the Custom-house (victualling bills and entring excepted) upon pain to forfeit one hundred pounds; and, upon refusal to make such entries, the officers of customs may go on board such ship of war, and bring from thence into his majesty's store-house all goods prohibited or uncustomed.

16. Sect. 4. The officers of customs, and their deputies, are authorised to go aboard any ship, as well ships of war as merchant ships; and to bring on shore all goods prohibited or uncustomed, except jewels, if they be outwards bound; and if they be inwards bound, to bring on shore, into his majesty's store-house, all small parcels of fine goods, or other goods, which shall be found in cabbins, chests, or other small package, or in any private place, which may occasion a just suspicion that they were intended to be fraudulently conveyed away; and all goods, for which the duties of tonnage and
poundage

poundage were not paid or compounded for within twenty days after the first entry of the ship, to remain in the storehouse until his majesty's duty be satisfied, unless the officers shall see cause to allow a longer time; and the said officers may freely stay on board until all the goods are delivered out of the said ships: and if any master, boatswain, or other person, shall suffer any truss, bale, pack, fardel, cask, or other package, to be opened on board, and the goods to be embezzled, carried away, or put into other package, after the ship comes into the port of her discharge, the said master, or others, shall forfeit one hundred pounds.

17. Sect. 5. In case, after the clearing of any ship and discharging the watermen or tidemen, there shall be found on board such ship any goods concealed, and for which the duties upon importation have not been paid; the master, or other person taking charge of such ship, shall forfeit one hundred pounds. And it shall be lawful for any person, authorised by writ of assistance under seal of the Exchequer, to take a constable, or public officer inhabiting near the place, and in the day time, to enter into any house, or other place, and, in case of resistance, to break open doors, chests, and other package, to seize any goods prohibited and uncustomed, and to secure the same in his majesty's store-house in the next port.

18. Sect. 6. No foreign built ship, not built in his majesty's dominions, shall enjoy the privilege of a ship belonging to England or Ireland, although owned or manned by English (except ships taken at sea by letters of mart or reprisal, and condemnation made in the admiralty); but all such ships shall be deemed as alien ships by the act of navigation. And whereas it is required by the said act, that in sundry cases the master and three fourths of the mariners are to be English; any of his majesty's ships are to be accounted English, and the number of
mariners

mariners to be accounted according to what they shall have been during the whole voyage. And where any officers shall be by any person, armed with club, or any weapon, forcibly hindered, affronted, abused, beaten, or wounded, either upon land or water, in the due execution of their office, every person so resisting, affronting, &c. the officers, or their deputies, or such as shall act in their assistance, shall, by the next justice of peace, or other magistrate, be committed to prison till the next quarter sessions; and the justices of the quarter sessions shall punish the offender by fine, not exceeding one hundred pounds; and the offender is to remain in prison till he be discharged by order of the Exchequer, both of the fine, and of the imprisonment, or discover the person that set him on work.

19. Sect. 7. If any keeper of any wharf, crane, key, or any of their servants, shall knowingly suffer to be taken up or landed, or shall ship off, or suffer to be water-born from their wharfs, &c. any goods prohibited, or whereof any duties are payable, without the presence of the officers of customs, or at times not appointed by law, (except in the port of Hull, as in the stat. 1 *Eliz. cap. 11.*) or goods passing by certificates, waste cocquet, or otherwise, without notice given to his majesty's officers, every such wharfinger shall forfeit one hundred pounds: and if any goods shall be taken in from the shore, into a boat, to be carried aboard any ship outwards bound, or laden out of any ship arriving from foreign parts, without a warrant and presence of an officer of the customs; such boat shall be forfeited, and the master or other mariner of any ship inward bound consenting thereunto, shall forfeit the value of the goods: and in case any person shall assist in the shipping off or carrying away such goods, such person being apprehended by warrant of any justice of peace, and the same being proved by the oath of two witnesses, the said offender for such first offence shall

shall, by such justice, be committed to the next goal, till he find surety for the good behaviour, until he be discharged by the lord treasurer, chancellor, under-treasurer, or barons of the Exchequer; and in case he shall afterwards offend in the like kind, he shall, by any justice of the peace, be committed to the next gaol for two months, or until he pay unto the sheriff five pounds for the use of his majesty, or until he shall, by the lord treasurer, chancellor, under-treasurer, or court of Exchequer, be discharged. If any goods shall be shipped to be carried to sea from any one port, to be landed at any other place of this realm, without a sufferance from the persons appointed for managing the customs and officers of customs, all such merchandizes shall be forfeited, and the master of every vessel that shall take in goods in any port, to be landed in some other port of England, shall, before the ship be carried out of port, take out a cocquet, and become bound to the king, with security, in the value of the goods, for delivery thereof in the port for which the same shall be entered, or in some other place within England, and (dangers of the seas excepted) to return a certificate within six months, under the hands and seals of the king's officers, signed also by some of the persons appointed for managing the customs, or their deputies, where the same shall be landed, to the officers of customs to whom such security hath been given, that such goods were there landed accordingly.

20. Sect. 8. If any officer shall make any false certificate of goods which should have been landed out of any ship, such officer shall lose his employment, and forfeit fifty pounds, and suffer one year's imprisonment, and be incapable of serving his majesty in any place of trust concerning his customs, and be further liable to such corporal punishment as the court of Exchequer shall think fit: and if any person shall counterfeit or falsify any cocquet, certificate, or return, transire, let-pas, or other custom-house

house warrant, he shall forfeit one hundred pounds, and the cocquet, &c. shall be of none effect.

21. Sect. 9. If any goods for which the duties are payable, shall be secretly conveyed on board any ship before the custom be duly answered, and shall be carried beyond sea, the owners of such goods, or persons who shall have caused the same to be shipped, shall forfeit the double value of the goods, computed according to the book of rates, except for coal, which shall pay double the custom, to be collected as by the act of tonnage and poundage.

22. Sect. 10. Every merchant passing any goods inwards or outwards, shall by himself, or his known agent, subscribe one of his bills of entry, with the mark, number, and contents of every parcel of such goods as are rated to pay by the piece or measure, and weight of the whole parcel of such goods as are rated to pay by weight, without which the officers of the customs shall not suffer any entry to pass; and no children of a'iens, under twenty-one years, shall be permitted to be traders, or any goods to be entered in their names.

23. Sect. 11. Upon any suits upon any law, concerning tonnage and poundage, or ships or goods to be forfeited by reason of unlawful importation or exportation, there shall not be any party jury.

24. Sect. 12. Every merchant having allowances for defects and damages upon goods, and five *per cent.* upon all goods imported, and twelve *per cent.* upon wines, shall, upon oath by himself or his known servant or factor, demand the monies due upon debentures for such foreign goods exported by certificate, with such allowances as were made to him upon the importation: and if he be found fraudulently to ship out less in quantity or value than is expressed in his certificate, the goods therein mentioned, or the value thereof, shall be forfeited; and the merchant shall lose the benefit of receiving back any part of the subsidy for those goods: and if any goods shipped

ped out by certificate shall be landed again in England, Wales, or Berwick, (unless in case of distress, which shall be presently made known to the principal officers of the port) no allowance shall be made for those goods, and the said goods, or value thereof, shall be forfeited.

25. Sect. 14. The king may, by commissions out of the Exchequer, assign further places, (except Hull) for the landing and shipping of goods, and to what ancient ports such places or creeks shall belong; and where any place shall be so appointed, the customer, collector, comptroller, and searcher of the head port, shall, by themselves, their deputies, or servants, reside, for the entring, clearing and passing, shipping and discharging of ships and merchandize; and may appoint the limits of every port: and it shall not be lawful for any person to lade from any place on land into any ship or bottom, any goods (fish taken by subjects, sea-coal, stone and bestials, excepted) to be transported beyond sea, or to lay on land out of any ship or bottom (being not in leak or wreck) any goods (fish taken by subjects, bestials and salt, excepted) brought from beyond sea by way of merchandize; but only upon such open places or wharfs as his majesty shall assign, without special sufferance from the commissioners and officers of customs, upon forfeiture of all such goods.

26. Sect. 15. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or for non-payment of custom, but by the persons appointed to manage the customs, or officers of customs, or persons deputed by warrant from the lord treasurer, or under treasurer, or by commission from his majesty under the great or privy seal; and if any seizure shall be made by any other person, for the causes aforesaid, such seizure shall be void.

27. Sect. 16. In every suit wherein persons appointed for managing the customs, or the officers of customs, or any officers or persons authorised to put in execution the act of navigation (*See Ships*) their deputies or servants, or any others acting in aid of them, shall be sued, it shall be lawful for the said persons to plead the general issue.

28. Sect. 17. If any seisor, informer, or officer, shall not prosecute to effect for the bringing to trial and condemnation the ships and merchandize by the seised or informed against, it shall be lawful for any of the persons appointed for managing the custom, or the officers of customs, or other persons deputed by them or thereunto authorized by the lord-treasurer, to make seisure of, or inform against, such merchandize, or bring his action for the same by way of devenerunt, and they shall be adjudged in law as the first informers and seisors.

29. Sect. 18. No informer shall be suffered to compound under one third of the appraised value, upon loss of his office.

30. Sect. 19. If any of the king's officers, or other persons deputed and employed about the customs, shall take any bribe, or connive at any false entry, whereby the king shall be defrauded of his customs, or goods prohibited to be imported or exported, be suffered to pass, the persons offending shall forfeit one hundred pounds, and be incapable of any office under the king: and the person who shall give such bribe, shall forfeit fifty pounds.

31. Sect. 20. If any person, offending as aforesaid, shall reveal his offence in two months to the treasurer, the chancellor, under-treasurer, or barons of the Exchequer, he shall be discharged.

32. Sect. 21. All foreign goods which, by the persons appointed for managing the customs, and the customer, collector, and comptroller, shall be permitted to be landed and taken up by bills at sight or sufferance, shall be landed at the most convenient
keys,

keys where the persons so appointed, customer, or collector, or comptroller, shall appoint, and there, or in his majesty's storehouse, at the election of the officers, shall be measured, weighed, and numbered by officers, which said officers shall perfect the entry, and subscribe their names, and the next day shall make report of every entry, without reasonable cause, or, in default thereof, shall forfeit one hundred pounds.

33 Sect. 22. No ship or boat employed for carriage of letters and packets shall, (unless in cases allowed by the persons appointed to manage the customs, or officers) import or export goods, upon penalty of one hundred pounds, to be paid by the master, with the loss of his place; and all goods that shall be found on board any such ship or boat shall be forfeited.

34. Sect. 23. No wines (other than Rhenish) no spicery, grocery, tobacco, pot-ashes, pitch, tar, salt, rosin, deal boards, fir timber, or olive-oil, shall be imported into England, Wales, or Berwick, from the Netherlands or Germany, upon penalty of the loss of all the said goods, as also of the ships and furniture.

Repealed as to deal boards and fir timber from Germany. 6 Geo. I. c. 15.

35. Sect. 24. Whereas by the acts of navigation an imposition of five shillings per ton is laid upon all vessels belonging to the subjects of the French king, which shall come into any port or road of England, Ireland, Wales, or Berwick, and shall there lade or unlade any goods, or take in and set on shore any passengers; it is enacted, that any such, which shall either put on shore, or put over into any boat, any goods or passengers without payment of custom and tonnage, at any time returning into any harbour of England or Ireland, shall not only pay the duties formerly due, but forfeit ten pounds; and whatsoever pilot or boat-man, which shall bring any goods

from on board such vessel, shall not only be liable to pay the duty of tonnage, but forfeit forty pounds.

36. Sect. 25 Vinegar, perry, rape, cyder, and cyder-eager, imported from foreign parts, is hereby rated to pay a subsidy of tonnage of four pounds ten shillings *per* ton, imported by English, and six shillings imported by strangers, according to the rate set upon French wines, to be collected as by the act of tonnage and poundage; and the same are discharged of all other sums heretofore set upon those commodities by name of poundage; and in case of exportation, there shall be allowed to the Englishman exporter three pounds ten shillings *per* ton, and to the alien four pounds fifteen shillings *per* ton, according to the rule of the book of rates.

37. Sect. 28. All suits upon the act of navigation may be prosecuted in the Exchequer; and upon all suits concerning the importation of goods, if the property be claimed by the importer, the *onus probandi* shall lie upon the claimer.

38. Sect. 29. In case the seizure or information shall be made upon the act of navigation, the defendants shall, on their request, have a commission out of Chancery to examine witnesses beyond sea, and have a competent time allowed for the return thereof before trial, and the examination of witnesses so returned shall be evidence at the trial.

39. Sect. 30. No writ of delivery shall be granted out of the Exchequer for goods seized but upon security, and that for goods perishable only, or where the informer shall delay trial.

40. Sect. 31. One moiety of all the forfeitures in this act shall be to the king, and the other moiety to such as shall seize or sue for the same.

41. All officers belonging to the admiralty, and commanders of ships and forts, as also all justices of peace, mayors, sheriffs, bailiffs, constables, and head-boroughs, and all the king's officers and subjects, whom

whom it may concern, shall be assisting to the officers of customs and their deputies in the due execution of every thing by this act enjoined.

42. Sect. 33. All persons employed in the customs shall take their oath for the true and faithful execution, to the best of their knowledge and power, of their several trusts and employments ; and the commissioners and principal officers in the port of London, and the principal officers in the out-ports, or any two of them, are authorized to administer such oath, and to cause the same to be registered in the custom-house.

43. Sect. 34. If any person employed in the customs shall demand or take any other moiety than by law is due, or shall put any merchant or other person out of his turn without order or approbation from the superior officers, or shall illegally detain the goods of any person, or neglect to make repayments, or shall not after notice give and execute his warrant, he shall be liable to double costs and damages.

44. Sect. 35. Every person that shall export goods from any port of this kingdom, capable of a ship of two hundred tons upon an ordinary full sea, to any part of the Mediterranean beyond the port of Malaga, or import goods from the places aforesaid in any ship that hath not two decks, and do carry less than two pieces of ordnance mounted, with two men for each gun, and other ammunition proportionable, shall pay for all merchandizes so exported or imported, one *per cent.* above the tonnage and poundage.

45. Sect. 36. It shall be lawful to export fish into any of the ports of the Mediterranean in any English ship, provided one moiety of her lading be fish, and to import merchandize in the same ship for that voyage, without paying any other rates than accustomed.

46. Stat. 25 Car. II. cap. 6. Sect. 1. So much of the statutes 11 Hen. VII. cap. 14. and 12 Car. II. cap. 4. and of the twelfth article of rules in the book of rates, and of *Charta Mercatoria*, and all other statutes, as concern any custom upon the native commodities of this kingdom (except coals), or manufactures wrought in this kingdom, or Berwick, to be exported out of this realm, payable by any merchant alien, made denizen, or other stranger, over and above the custom payable by natural-born subjects, is repealed.

47. Sect. 2. Every merchant, denizen or alien, shall pay for all merchandize, consisting of native commodities, (except coals) or manufactures wrought in England or Berwick, to be carried out by such merchant, such customs only, and no other, than merchants born subjects, by stat. 12 Car. II. cap. 4. pay for such commodities or manufactures.

48. Sect. 3. Every merchant, denizen or alien, shall pay for fish caught by Englishmen, and exported in English shipping, whereof the master and three fourths of the mariners shall be English, such customs, and no other, than merchants natives pay for the same.

49. Stat. 2 Will. and Mar. stat. 2. cap. 4. sect. 2. There shall be paid to their majesties, for merchandizes imported hereafter mentioned, over and above the duties already imposed, the impost following, viz.

I M P O S T S.

A.

	£.	s.	d.
A LUM, the hundred weight, containing one hundred and twelve pounds	0	2	6
Anvils, wrought, the hundred weight, containing one hundred and twelve pounds	0	9	3
Ashes, called Pot-ashes, the barrel, containing two hundred pounds weight	0	8	0

B.

Barillia, or Saphora, the hundred weight, containing one hundred and twelve pounds	0	2	6
Brimstone, the hundred weight, containing one hundred and twelve pounds	0	4	8

C.

Candles of tallow, the hundred weight, containing one hundred and twelve pounds	0	10	0
Chimney-backs, { small, the piece	0	1	2
{ large, the piece	0	2	4
Cordage, ready wrought, the hundred weight, containing one hundred and twelve pounds	0	5	0

D.

Drugs, {	Succus Liquoritiæ, or Juice of Liquorice, the pound weight	0	1	0
	All other Drugs, rated in the first column of rates (regard being had to the rule at the end of the Rates of Drugs, in favour of a direct importation, &c.) for every twenty shillings of their respective rates	0	2	0

E.

Earthen-ware, not particularly rated in the first column of rates, for every twenty shillings of the rate in column the second	0	2	6
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G.

Glasses, {	Drinking-glasses, and other glass, and all manufactures of glass, (except Rhenish and Muscovia window-glass) ; for every twenty shillings of the rate or value	0	3	0
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E c 4

Grocery

		L.	s.	d.	
Grocery- wares, viz.	Currants, for every twenty shillings of the rate, as by 4 and 5 Wil. and Mar. cap. 5. sect. 10	}	0	0	6
	Ginger of the British plantations, as Grocery (regard being had to the Rule following the Rates on Spice, in favour of a direct importation, &c.) for every twenty shillings of the rate		0	2	0
	Liquorice, the hundred weight, containing 112 pounds		0	18	8
	Liquorice-powder, the hundred weight, containing 112 pounds		1	17	4
	the pound		0	0	3
	Pep- per, { imported directly from the place of its growth, in British built shipping, the two pounds, as by 8 Geo. I. cap. 15, sect. 16.		0	0	1
	Raisins, for every twenty shillings of their respective rates, as by 4 and 5 Wil. and Mar. cap. 5, sect. 10		0	1	0
	of all other sorts, rated in the first column of rates, except cinnamon, cloves, mace, nutmegs, sugar and tobacco; for every 20 s. of their respective rates		0	2	0

H.

Hops, the hundred weight, containing 112 pounds

1 0 0

I.

Iron, wrought or unwrought, or cast (except bushel iron and Bar-iron unwrought, imported from Ireland) imported from any foreign parts in British-built ships, whereof the master and three fourths of the mariners, at least, are British, the ton	}	1	3	0
In any other ships, and not so navigated, the ton		1	13	0
But note, that no manufactured Iron, or Iron-ware, particularly charged, are liable to this 23s. or 33s. per ton. By 23 Geo. II. cap. 29, Bar-iron made and imported from the British colonies in America into the port of London, and regularly imported, &c. is free of duty.				
Iron slit or hammered into rods, commonly known by the name of Rod-iron, except imported from Ireland, the hundred weight, containing 112 pounds	}	0	5	0
Iron drawn, or hammered, less than three fourths of an inch square; and all other iron-wares manufactured, the hundred weight, containing 112 pounds		0	5	0

K.

K.

Kettles of iron, the piece

£. s. d.
0 1 3

L.

Linens, viz.	Callicoes, and all other Indian Linens (not printed, painted, stained, or dyed there, as by 11 and 12 Wil. III. cap. 10.) for every 20s. of their rate or value	}	0	4	0
	Linen-cloth, of the manufacture of the Spanish-Netherlands, or of the United-Provinces, of the breadth of two ells, or upwards, and under three ells; for every 20s. of the rate		0	1	6
	of the breadth of three ells, or upwards, for every 20s. of the rate		0	4	6
	All other Linen (except of the manufacture of the Spanish-Netherlands, or of the United Provinces, not exceeding an English ell, and one eighth, in a breadth; and Irish Linen, by certificate, &c.); for every 20s. of their respective rates or values		0	0	9

M.

Manufactures of India or China (except indico, arrack, and wrought silks, Bengals, and stuffs mixed with silk or herba); for every twenty shillings of their rates or values	}	0	4	0
Melasses from any other place than the British plantations in America, the hundred weight, containing 112 pounds		0	8	0

O.

Oil,	{ Hempseed-oil, Rape-oil, and other Seed-oil,	}	8	0	0
	the ton				
	{ Olive-oil, the ton		4	0	0

But by 1 Ann. cap. 13, sect. 20, this duty on Olive-oil was repealed after the 31st of July, 1706

P.

Pans, called Frying-pans, the hundred weight, cont.		}	0	4	0	
112 pounds						
Paper, viz.	{	Blue Paper, the rheam	0	1	6	
		Brown Paper, the bundle	0	0	2	
		Demy Paper, the rheam	0	1	6	
		Painted Paper, the rheam	0	1	6	
		Royal Paper, rated in the first column of chapter the second, the rheam	}	0	2	0
		All other Paper, for every 20s. of the rate		0	1	0
					Plates,	

		£.	s.	d.
Plates,	{ single, white or black, the hundred	0	4	4
	{ double, white or black, the hundred	0	8	8
	{ Harness-plates, or Iron-doubles, the piece	0	1	4
Pots of iron, the piece		0	1	3

S.

Seeds, called Cole-feed, Hemp-feed, and Rape-feed, the last	}	4	0	0
Silk, raw, from China or the East-Indies; for every 20s. of the rate	}	0	1	0

By the 22d of Geo. II. cap. 9, sect. 2, Raw-silk from China is to pay the same duties, &c. as Raw-silk of the produce of Italy, whereby it becomes exempted from this duty.

Silks wrought, from any other place than India or China, for every 20s. of the rate or value	}	0	2	0
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Soap, the hundred weight, cont. 112 pounds		0	10	0
--	--	---	----	---

But by 1 Ann. cap. 13, sect. 20, was repealed after the 31st of July, 1706

Starch, the hundred weight, cont. 112 pounds		1	0	0
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Steel, the hundred weight, cont. 112 pounds		0	5	6
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T.

Tallow, the hundred weight, cont. 112 pounds		0	5	0
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Tin, the hundred weight, containing 112 pounds		1	10	0
--	--	---	----	---

Wood, viz.	{ Deal-timber, or other timber boards, wain-	}	0	2	0
	{ scot, pipe-staves, box-wood, and other wood, from any part of Europe, except Ireland; for every 20s. of the rate or value				

W.

Wool, called Bever-wool, cut and combed, except wool combed in Russia, and imported from thence in British ships, the pound	}	0	15	0
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Wire, viz.	{ Iron-wire, foreign, of all sorts (except Card-wire, and all other sorts of Iron-wire smaller than the sorts commonly called or known by the names of Fine, fine, and Superfine; and all wool-cards, or any other wares made of Iron-wire) the hundred weight, containing 112 pounds	}	1	2	6
	{ Steel-wire, the two pounds				

Brass, Copper, or Latten-wire, the hundred weight, containing 112 pounds	}	0	0	3
	}	0	15	0

Y.

Yarn, viz.	{ of cable, the hundred weight, containing 112 pounds	}	0	5	0
	{ of flax, or hemp (except Cable-yarn) for every 20s. of the rate				

50. Sect. 53. Where any duties hereby granted are to be levied according to the value, the value shall be taken according to the book of rates, if such goods are there rated ; if not, the value shall be taken by the importer's oath ; the duties hereby imposed not to be reckoned into the value.

51. Sect. 54. For all additional duties hereby imposed, the importer giving security shall have twelve months time (where the same is not otherwise limited) for payment by four quarterly payments ; or upon present payment shall have ten *per cent.* abated him ; and if such goods be again exported within a twelve-month, the additional duty shall be repaid, or the security vacated.

Enlarged to three years by 7 Geo. I. cap. 21.

52. Sect. 56. The duties hereby imposed shall be collected as by stat. 12 *Car. II. cap. 4.* and the rules and orders thereunto annexed.

Continued and made perpetual by 9 Ann. cap. 21. and 3 Geo. I. cap. 9, and part of the South Sea fund.

53. Stat 2 *Will. and Mar. stat. 2. cap. 10. sect. 20.* During the continuance of the act 2 *Will. and Mar. stat. 2. cap. 4.* (made perpetual by 9 *Ann. cap. 21.* and 3 *Geo. I. cap. 9.*) there shall be continued in London an office for receipt of all money payable by that act, in which office all monies arising by the same in the port of London, the out-ports, or elsewhere, shall be paid to the receiver-general of the customs, who is to keep the same apart ; and the comptroller-general is to keep distinct accounts of the same, to which all persons concerned shall have access without fee. And the receiver-general is to pay the same into the exchequer weekly, apart from other duties. And if he neglect to pay, or misapply the same, he shall forfeit his office, and be incapable of any place of trust, and pay the value of the sum misapplied to any person who will sue for the same.

54. Stat.

54. Stat. 4 *Will.* and *Mar.* cap. 5. sect. 2. There shall be paid to their majesties for merchandizes hereafter mentioned imported, over and above all duties already payable, the additional imposts following, viz.

I M P O S T S.

A.

	£.	s.	d.
AMBER-BEADS, for every 20s. of the rate	0	4	0
Amber-oil, or Oil of Amber, for every 20s. of the rate, but regard to be had to the Rule at the end of the Rates on Drugs, in favour of a direct importation, &c.	0	2	0
Amber, rough, for every 20s. of the rate	0	2	0
Anchovies, the little barrel, not exceeding 16 pounds of fish, for every 20s. of the rate	0	1	0
Ashes, called Wood, Weed, or Soap-ashes, the last	0	6	0

B.

Bacon, the pound, as by 5 and 6 Wil. and Mar. cap. 2, sect. 4.	0	0	4
Barbers Aprons and Checks, the piece	0	0	8
Battery, Bash-rones, or Kettles, the hundred weight, containing 112 pounds	0	5	0
Black, called Lamp-black, for every 20s. of the rate	0	4	0
Books, unbound, the hundred weight, containing 112 pounds	0	4	0
Boultel-reins, for every 20s. of the rate	0	2	0
Bracelets, or Necklaces, of glass, the groce	0	2	0
Brandy, Aqua-vitæ, or strong waters, single, the gallon	0	2	0
Brandy, strong waters, or spirits above proof, called Double-brandy, the gallon	0	4	0
Brass, wrought, for every 20s. of the rate	0	1	0
Bristles, dressed and undressed, for every 20s. of the rate	0	1	0
Buckrams, for every 20s. of the rate	0	1	0
Buttons of hair, for every 20s. of the rate	0	2	0

C.

Calve-skins, for every 20s. of the rate	0	1	0
Cases, called Rattans, the thousand	0	5	0
Canes,			

Customs.

397

	£.	s.	d.
Canes, called Walking-canes, the thousand	1	5	0
Carpets of all sorts, for every 20s. of the rate or value	0	1	0
Catlings and Luteftrings, the groce	0	1	6
Coals of Scotland, for every 20s. of the rate	0	1	0
But by act of union, 5 Ann. cap. 8. subject to the Coal duties only.			
Coppers, called Rose, Brick, Copper-coin, and all cast copper, the hundred weight, containing 112 pounds	0	7	6
Copper, part wrought, as plates, bars, rods, or raised, the hundred weight, cont. 112 pounds	0	12	6
Copper, fully wrought, the hundred weight, cont. 112 pounds	0	17	6
Coral-beads, for every 20s. of the rate	0	4	0
Coral, polished, for every 20s. of the rate	0	4	0
But regard to be had to the Rule at the end of the Rates of Drugs, in favour of a direct importation, &c.			
Cotton, viz. manufactures of Cotton only, except Dimity not brought from East-India or China; for every 20s. of their rates or values	0	4	0
Cowries, for every 20s. of their rate	0	2	0

D.

Diamonds, Pearls, Rubies, Emeralds, and all other jewels and precious stones; for every hd. pounds value, upon the oath of the importer, in lieu of all former duties; viz. Old Subsidy, Petty Custom, and one per cent.	1	0	0
But by 6 Geo. II. cap. 7, sect. 1,			
Dornix, except of or from any of the French King's dominions, for every 20s. of the rate	0	2	0
Dying-wood, of all sorts, except Red-wood from Guinea, Drugs, and Logwood, for every 20s. of the rate	0	1	0
But by 8 Geo. I. cap. 15, sect. 10, Brazil-wood, Braziletto-wood, Fustic, Vicorago-wood, and Sapan-wood, may be imported			
		Free	

E.

Elephant's Teeth, for every 20s. of the rate	0	2	0
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F.

Flannel, the yard	0	0	2
Flax, rough, for every 20s. of the rate	0	1	0
But by 4 Geo. II. cap. 27, sect. 1,			
		Free	

	£.	s.	d.
Flax, dressed or wrought, for every 20s. of the rate	0	3	0
French goods, except Brandy, Strong-water, Aqua-vitæ, and Spirits; Salt, Wine, and Vinegar, for every 20s. of the rate or value	0	5	0
French Wines, the ton	8	0	0
Frize, the two yards	0	0	7
Furs of all sorts, for every 20s. of their rate or value	0	1	0

G.

Goat's-hair, called Carmentia-wool, the pound	0	0	4
Goat's-hair, of any other sort, the pound	0	0	2
Gold and Silver Thread and Wire, counterfeit, for every 20s. of the rate	0	1	0

H.

Hemp, rough, for every 20s. of the rate	0	1	0
Hides, { Buff-hides, the hide	0	2	0
{ Losh-hides, the hide	0	1	0
{ of all other sorts, dressed and undressed, for every 20s. of their rates	0	1	0

I.

Inkle, unwrought, for every 20s. of their rate	0	0	6
But, by the 24th of Geo. II. cap. 46, this, and all other duties then payable on unwrought Inkle, were taken off.			
Indico, { of the British plantations, the pound	0	0	2
{ of foreign plantations, the pound	0	0	4
But by 8 Geo. I. cap. 15, sect. 10,			Free
Iron, Iron pots, kettles, backs for chimneys, frying-pans, anvils, wrought, white and black plates, single and double; and all other Iron wares from Ireland, except Bar-iron unwrought, and Iron slit or hammered into rods; the same respective duties that are charged thereon from any foreign parts, for the Impost, 1690. See 2 W. and M. Sef. 2, c. 4.			

L.

Latten, called Shaven-latten, Black-latten, and Round Bottoms; for every 20s. of the rate	0	2	0
Leather of all sorts, for every 20s. of the rate or value	0	1	0
Lemon-juice, for every 20s. of the rate	0	4	0
Lime-juice, for every 20s. of the rate	0	4	0
Litmus, for every 20s. of the rate	0	1	0

M.

M.

	£.	s.	d.
Madder of all sorts, for every 20 s. of their rates	0	1	0
But, by 8 Geo. I. cap. 15, sect. 10, Litmus and Madder are	Free		
Mettal, prepared for battery, the hundred weight, containing 112 pounds	0	5	0

O.

Orchal, for every 20 s. of the rate	0	1	0
But by 8 Geo. I. cap. 15, sect. 10,	Free		

P.

Pantiles, the thousand	0	8	0
Pintadoes, or Callico Cup-board Cloths, not from East-India or China; for every 20 s. of the rate	0	1	0
Pitch, not of the product of the British plantations, for every 20 s. of the rate	0	0	6
Plates of silver, of all sorts, gilt or ungilt, for every 20 s. of the rate	0	1	0

R.

Rice, for every 20 s. of the rate	0	1	0
Rosin, of all sorts (except French) not of the product of the British plantations, for every 20 s. of the rate	0	2	0

S.

Salt, except for curing fish, the wey	0	5	0
Silk, Ferret, or Floret, for every 20 s. of the rate	0	0	6
Silk, thrown, of all sorts, in the gum; for every 20 s. of the rate	0	1	0
Silk, called Alamodes and Lustrings, for every 20 s. of the rate	0	3	0
Silk, wrought, except Alamodes and Lustrings, and East-Indian Silks; for every pound weight	0	2	0
Skins of all sorts, for every 20 s. of the rate or value	0	1	0

T.

Tapestry, except of or from any of the French king's dominions; for every 20 s. of the rate	0	2	0
Tar, not of the product of the British plantations, for every 20 s. of the rate	0	0	6
Thread, outnal, the dozen pounds	0	4	0
Ticks and Tickings, for every 20 s. of the rate	0	1	0
Tow, for every 20 s. of the rate	0	1	0

W.

W.

Wax, called Bee's-wax, for every 20 s. of the rate	£.	s.	d.
Wire, of latten, brass, or copper, the hundred wt. containing 112 pounds	0	1	0
All goods, not particularly rated in the first column of Rates, for every 20 s. of their respective values upon oath, or of their prices at the candle, except mum, and such goods as are before particularly charged to this duty, or impost, 1690	0	6	6
	0	1	0

55. Sect. 4. The rates hereby imposed, to be raised (except where it is otherwise directed) according to the act of tonnage and poundage, and other laws relating to the customs.

56. Sect. 5. The duties upon single and double brandy shall be levied according to an act 12 *Car. II. cap. 24*, or any other law relating to the excise.

57. Sect. 6. The importers giving security at the Custom-house, shall have twelve months time for paying the additional duties hereby imposed, by four quarterly payments, and for ready money shall have ten *per cent.* abated; and if such goods be again exported within twelve months, the duty shall be repaid, or the security vacated, brandy excepted.

Enlarged to three years by 7 Geo. I. cap. 21.

58. Sect. 7. The duties hereby charged upon amber beads, amber rough, coral beads, and polished coral and couries, shall be repaid to the merchant exporting the same within three years.

59. Sect. 8. No brandy shall be imported in any vessel not containing sixty gallons at least, on pain of forfeiting the same, or the value, one half to their majesties, and the other half to the informer.

60. Sect. 9. The officers concerned in levying the duties arising by this act shall keep a separate account thereof, and pay the same in specie into the Exchequer

Exchequer weekly, and upon neglect or refusal, shall forfeit their places.

61. Sect. 10. During the continuance of the act 2 *Will.* and *Mar. cap.* 4. the sum of five pounds only shall be paid for every hundred pounds value of raisins, above the rates thereon charged in the book of rates, and fifty shillings for every hundred pounds value of currants above the rates in the book of rates.

62. Sect. 11. No piece of callico imported during the continuance of the last recited act, of the breadth of one yard and a quarter, or under, shall exceed in length ten yards; and no pieces above that breadth shall exceed six yards; and pieces exceeding those lengths shall be rated according to the length of ten yards and six yards for each piece, and pay in that proportion, according to the sum rated in the book of rates, and the subsidy and additional duty shall be collected and paid according to that admeasurement.

63. Sect. 12. Linen of Prussia, Polonia, or any part of the east country (except Russia) above the breadth of three quarters and half a quarter of a yard, shall pay as broad Germany linen; and whited Hinderlands from the same countries under that breadth shall pay as narrow east country linen.

64. Sect. 14. No foreign alamodes and lustrings shall be imported, but upon notice first given to the commissioners of the customs, of the quality and quantity, marks, numbers, and package thereof, with the name of the ship and master, and the place where they intended to import the same, and taking a licence from the commissioners for the lading and importing thereof, which licence shall be granted without fee. The said goods imported without such notice and licence, shall be forfeited, one moiety to their majesties, and the other moiety to him that will seize or sue for the same.

65. Sect. 15. Officers of the customs for passing any debenture for repayment of the duties to be

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paid

paid back on exportation, according to this or any other act, shall only receive such fees as were payable for debentures for the repayment of the half-subsidy, according to the book of rates, and no more; nor shall any fee be taken for any oath to be administered at the Custom-house upon this act.

66. Sect. 18. Officers concerned in levying the duties arising by this act, shall keep a separate account thereof, and pay the same in specie into the Exchequer every Wednesday, &c. and upon neglect or refusal, shall incur the penalties, &c. that other officers of the Exchequer after mentioned shall be liable to, which monies shall be applied to the uses mentioned in this act.

67. Sect. 23. If any officer of the revenue misapply the money, he shall forfeit his office, and be incapable to hold any office.

68. Sect. 25. Commissioners and patent officers, their deputies, clerks, and servants, who shall have any employment about the customs, shall, at their admission, take their oaths for the true execution, to the best of their knowledge and power, of their several trusts and employments, and that they will take no reward or gratuity but their respective salaries, and what shall be allowed them by the crown, or the regular fees established by law, for any service to be done in the execution of their employments.

Continued and made perpetual by 9 Ann. cap. 21.

3 Geo. I. cap. 9. and part of the South-Sea fund.

69. Stat. 4 and 5 Will. and Mar. cap. 15. sect. 13. None shall be admitted to swear to a debenture for any duties to be drawn back upon re-exportation, but he who is the true exporter, as being either interested in the goods, or employed by commission.

70. Sect. 14. All persons who by way of insurance, or otherwise, shall undertake to deliver any goods

goods imported from beyond sea, without paying the duties payable for the same, or any prohibited goods, or shall deliver the same as aforesaid, knowing thereof, and all their abettors, shall forfeit five hundred pounds above the forfeitures to which they are already liable.

71. Sect. 15. All who shall agree to pay any money for the insuring or conveying any goods imported, without paying the duties, or any prohibited goods, or shall receive such prohibited goods, or such other goods before the duties are paid, knowing thereof, shall also forfeit five hundred pounds, the one moiety of the said forfeitures to their majesties, and the other to the informer.

72. Sect. 16. If the insurer be the discoverer, he shall not only keep the insurance money given him, and be discharged of the penalties to which he is liable, but shall have one half of the penalties imposed upon the parties making such insurance, or receiving the goods; and in case no discovery be made by the insurer, and the party insured shall make any discovery thereof, he shall recover back his præmium, and have one moiety of the forfeitures imposed upon the insurer, and be discharged of those imposed upon himself.

73. Sect. 17. The said penalties and forfeitures shall be recoverable according to the course of the court of Exchequer.

74. Sect. 18. No penalty hereby inflicted shall be recoverable, unless prosecuted within twelve months after the fact committed.

75. Sect. 19. All duties that shall accrue to their majesties at the Custom-house for prize goods, shall be applied to the credit of the act 4 and 5 *Will.* and *Mar. cap. 5.* of the additional imposts.

76. Stat. 6 *Will.* and *Mar. cap. 1. sect. 5.* Two commissioners of the customs, first named in commission, shall be sworn before the chancellor, or chief baron of the Exchequer, or master of the rolls,

for the true and faithful execution of their trusts, and that they will not receive any reward or gratuity, other than their respective salaries, or the regular fees established by law. And all the other commissioners, and other officers in the customs in London, shall, at their respective admissions, take the said oaths before any two commissioners of the customs. And officers of the customs in the out-ports, or elsewhere, shall take the said oath before two justices of peace; and when any new commission shall be granted for the customs, the said oath shall be taken by the new commissioners. And if any of the commissioners or officers shall neglect or refuse to take the said oath, every such person shall forfeit his office.

77. Sect. 6. The persons administering the said oaths shall certify the same to the next quarter sessions to be recorded.

78. Stat. 7 and 8 Will. III. cap. 10. sect. 12. No Debentures shall be allowed for any goods exported, but such only as shall, according to the second rule annexed to the book of rates, be shipped for transportation, and the shipping testified by the searcher and under-searcher in the port of London, or the searcher of any of the out-ports.

79. Sect. 13. Two shillings only shall be paid for every tun of *lapis calaminaris* exported, over and above the rates charged by the book of rates.

Re-enacted 8 and 9 Will. III. cap. 10. sect. 9. and 1 Ann. stat. 1. cap. 13. sect. 9.

80. Sect. 16. Linen cloth, called Borelaps, not exceeding 28 inches and a half in breadth, nor twelve pence an English ell in value, shall be entered *ad valorem*.

81. Stat. 7 and 8 Will. III. cap. 10. sect. 2. There shall be paid to his majesty, over and above what is already imposed, the further rates and duties following, *viz.*

82. Sect.

82. Sect. 3. For every ton of French wine imported for twenty-one years, twenty-five pounds.

83. Sect. 5. Every ton of French vinegar, fifteen pounds.

84. Sect. 6. For all other goods of the product or manufacture of France, twenty-five pounds *per cent. ad valorem*.

85. Sect. 7. To be collected as by 12 *Car. II. cap. 4.* or any other laws relating to the customs.

Made perpetual by 1 Geo. I. cap. 12. and part of the Aggregate fund.

86. Stat. 8 and 9. *Will. III. cap. 36. sect. 2.* It shall be lawful for any person to sue for the penalty of five hundred pounds in stat 4 and 5 *Will. and Mar. cap. 15. par. 162, 163,* in any of his majesty's courts of record at Westminster.

87. Stat 9 and 10 *Will. III. cap. 23, sect. 1.* Over and above all subsidies of tonnage and poundage, and all additional impositions already payable, there shall be paid to his majesty one other new subsidy, called tonnage, for all wines which, during his majesty's life, shall be imported, *viz.*

88. Sect. 2. Of every ton of French wine that shall come into the port of London by way of merchandize by natural-born subjects, four pounds ten shillings, and by aliens six pounds. Every ton of like wine brought into any other port by natural-born subjects, three pounds, and by aliens, four pounds ten shillings.

89. Sect. 3. Every butt or pipe of Muscadels, Malmsies, Cates, Tents, Alicants, Bassards, Sacks, Canaries, Malagas, Madeiras, and other sweet wines of the growth of the Levant, Spain, or Portugal, brought into the port of London by natural-born subjects, forty-five shillings, and by aliens, three pounds. And every pipe of the like wine brought into any other port by natural-born subjects, thirty shillings, and by strangers forty-five shillings.

90. Sect. 4. Every awm of Rhenish wine, or of the growth of Germany, brought into this realm by natural-born subjects, twenty shillings; and by aliens twenty-five shillings. And such wines landed in any out-ports, and afterwards brought to London by certificate, shall pay so much more subsidy by this act, as they paid short of the duty due in the port of London. And one further new subsidy called poudage, viz. of all goods brought into this realm by way of merchandize, twelve pence in the pound of the value of the goods in the book of rates. And if any of the goods so imported shall not be particularly rated in the book of rates, the new subsidy shall be levied according to the value of such goods, upon oath of the merchant. Except out of this subsidy all wines before limited to pay tonnage; and all fish, English taken, and brought by English bottoms into this realm, and all fresh fish and bestial, and all other goods, which in the book of rates are custom free, and all goods used in dying.

91. Sect. 5. All drugs chargeable by this act, imported directly from the place of their growth in English-built shipping, shall pay only one third part of what is charged thereupon in the book of rates; and all spicery, except pepper, imported directly from the place of its growth in English built shipping, shall pay, by this act, but one third part of what is charged in the book of rates. And this act shall not charge linen imported with the additional duty of one moiety of the rate mentioned in the book of rates. And all foreign wrought silks exported within one year from the importation, shall have two thirds of the rate hereby charged repaid at the Custom-house. And this act shall not charge wrought silks imported with the additional duty of one moiety mentioned in the book of rates; or tobacco of the English plantations, with the additional duty of one penny *per* pound, over and above the subsidy in the book of rates; or wines of France, Germany,

Germany, Portugal, or Madeira, with the additional duty of three pounds *per* ton ; or any other wines, with the additional duty of four pounds *per* ton, mentioned in the former acts or book of rates. And for all tobacco of the English plantations, exported within one year after importation, the further subsidy of one penny *per* pound, hereby granted, shall be repaid at the Custom-house.

92. Sect 6. Out of the subsidies of tonnage and poundage by this act granted, there shall be the like allowances as are prescribed by the former act or book of rates, or the rules thereunto annexed.

93. Sect. 7. The subsidies of tonnage and poundage hereby granted, shall be collected by the officers of the customs, under the management of the commissioners of the customs, and shall be paid into the Exchequer ; and all the clauses in the said former act of tonnage and poundage, or in the book of rates, or the rules thereunto annexed, or in any other law in force, touching the said subsidy of tonnage and poundage, shall be put in execution for answering the subsidy by this act granted.

94. Sect. 8. The whole further subsidy laid by this act upon all sugars imported from the English plantations in America shall be paid back at exportation.

95. Sect. 9. For every hundred weight of brown and Muscovado sugars refined in England, exported out of this kingdom during the continuance of this act, there shall be repaid at the Custom-house to the exporter, within a month after demand, three shillings, oath being made by the refiner, that the sugar was produced from brown and Muscovado sugar, charged by this act, and, as he believes, imported from his majesty's plantations in America, and the duties paid at importation, and duly exported ; the searcher also certifying the shipping, and all other requisites performed.

96. Sect. 10. For the further subsidy hereby granted upon tobacco of the English plantations in America, the merchant, giving security, shall have three months from the importation to pay the same, with a discount after ten pounds *per cent. per annum*, for prompt payment.

97. Sect. 11. Ginger of the English plantations in the West Indies, valued by the book of rates at sixteen pence *per pound*, shall pay for the said former subsidy one shilling, and for the subsidy by this act one shilling for every hundred weight, and no more.

98. Sect. 13. Where any the foreign goods by this act charged (except foreign wrought silks, tobacco, sugars, and refined sugars, touching which other provisions are hereby made) shall be again exported within a twelve-month, [*Enlarged to three years by 7 Geo. I. cap. 21. sect. 10.*] and proof be made by certificate from the proper officer of the entry, and payment of the subsidy hereby granted, with the oath of the merchant importing and exporting the same, affirming the truth thereof, and all other requisites performed, touching re-payment of the half-subsidy by the former act; the whole subsidy paid upon this act shall be repaid within one month after demand, or the security vacated, as to so much as shall be exported; and as to foreign wrought silks, tobacco, sugars, and refined sugars, no draw-back upon this act shall be made, unless re-exported within the times hereby limited for other goods, and that like proof be made, and other requisites performed for the said silks, &c. as for other goods re-exported; and upon such exportation of foreign wrought silks, and proof made, and other requisites performed, not only the two thirds of the subsidies by this act directed to be paid for such silks, but also the remaining one third of the same subsidy shall be entirely repaid at the Custom-house.

Continued by 1 Geo. II. stat. 1. cap. 1. sect. 2. during his majesty's life, for the expence of the civil government.

99. Stat. 1 *Ann.* stat. 1. cap. 26. sect. 1. No cocquet, or bond, shall be required from any master of any hoy or vessel carrying corn, meal, and other goods (for which no other duty is payable upon exportation, and which may be lawfully exported) between London-bridge and a supposed line leading from the North-Foreland to the point called the Naes; but the same goods may be conveyed by transires or let-pafs, for which transire there shall be paid three shillings and five pence only, to be distributed among the officers of the customs, as where bonds and cocquets are taken for goods carried coastwise.

100. Sect. 2. One shilling and eight pence half-penny shall be distributed among the said officers in lieu of their fees, where the quantity of corn exceeds not fifty quarters, and hops fifty bags, in any one vessel.

101. Sect. 3. Where upon carrying goods from port to port bonds are given, to return certificates of landing or discharging the said goods, the officer transmitting the bonds to the Exchequer, shall indorse the substance of the certificates on such bonds under penalty of treble damages, besides costs, to be recovered in any court of record by the party grieved.

102. Sect. 4. Nothing in this act shall take away any duty or toll from the city of London.

103. Sect. 5. Saving the right and privilege of the ports of Sandwich and Ipswich, and their members, and of the customers, comptrollers, and searchers of the ports of Sandwich and Ipswich, and creeks and havens to them belonging, in all things other than those herein provided for.

104. Stat. 2 *Ann.* cap. 9. sect. 1. Over and above the subsidies of tonnage and poundage granted by
9 *Will.*

9 *Will. III. cap. 23.* and all other duties, there shall be paid to her majesty for tonnage, for all wines imported during three years, one third part of the duties imposed by the said act, 9 *Will. III. cap. 23.* and poundage of all goods imported by way of merchandize, *viz.* one third of the duties imposed by the same act, except such goods as therein are excepted.

105. Sect. 2. Where, by the said act, drawbacks or abatements are to be made, the same shall be made of the duties hereby granted, which duties shall be raised as by the said act is prescribed.

106. Sect. 3. For every hundred weight of English refined sugar exported, there shall be repaid to the exporter, one month after demand, one shilling (above the three shillings payable by the said act) oath being made, that it was produced of Muscovado sugar hereby charged, imported from the plantations, and duty paid, &c. as in paragraph 95.

107. Sect. 4. The Custom-house officers shall not take any fee for any thing relating only to the tonnage and poundage hereby granted, on penalty of forty pounds, one third to her majesty, and two thirds and costs to the party grieved.

108. Sect. 14. In all cases where the oath of merchants importing and exporting is required, to obtain a draw-back or allowance for foreign goods exported, the oath of the agent or husband of any company trading by a joint stock, and the oath of a known servant of a merchant, employed in the making his entries, and paying his custom, shall be sufficient.

Re-granted 4 and 5 Ann. cap. 6. for ninety-eight years, and made perpetual by 1 Geo. I. cap. 12. 3 Geo. I. cap. 8. and 5 Geo. I. cap. 3. and part of the aggregate fund.

109. Stat. 3 and 4 *Ann. cap. 5. sect. 1.* Above all other duties there shall be paid to her majesty one subsidy called tonnage upon all wines, which, during

during four years, shall be imported, *viz.* two third parts of the duties by stat. 9 *Will.* III. *cap.* 23. granted, and one other subsidy called poundage of all goods imported during the said term by way of merchandize, *viz.* two third parts of such duties as by the said act 9 *Will.* III. *cap.* 23. were granted, except tobacco and currants imported in English-built shipping, and navigated according to law, and such goods as by the said act are exempted.

110. Sect. 2. Where any draw-backs or abatements are to be made of the said duties, there shall be proportionable draw-backs made of the duties by this act granted; and these subsidies shall be collected as by the said act of new subsidy 9 *Will.* III. *cap.* 23.

111. Sect. 3. The officers of the customs, their clerks or substitutes, shall not take or demand any fee for any thing to be done in relation only to the subsidies herein granted, on pain of forty pounds, one third to her majesty, and the other two thirds, (besides costs) to the party grieved.

Made perpetual by 7 Ann. cap. 7. 1 Geo. I. cap.

12. 3 Geo. I. cap. 8. and 5 Geo. I. cap. 3. and part of the aggregate fund.

112. Stat. 4 *Ann. cap.* 6. *sect.* 3. The exception in the act 3 *Ann. cap.* 5. *par.* 109, whereby currants imported in English-built shipping, navigated according to law, are exempted from the duties thereby granted, shall be extended to all such currants as shall be imported in ships belonging to the subjects of the republic of Venice.

This clause is declared to be perpetual by 8 Ann. cap. 13. *sect.* 21.

113. Stat. 8 *Ann. cap.* 7. *sect.* 63. Every person upon entry of any claim in the court where prohibited and uncustomed goods are prosecuted, shall give security, in the penalty of thirty pounds, to answer costs; and in default of giving security within

in the time limited by the course of the court, such goods shall be recovered.

114. Stat. 8 *Ann. cap. 13. sect. 16.* In case any foreign goods specified in any certificate, whereon any draw-back is to be made, or any debenture is to be made forth for such draw-back, shall not be really exported (the danger of the seas and enemies excepted) or shall be landed again in Great Britain, (unless in case of distress to save the goods from perishing, which shall be presently made known to the persons appointed to manage the customs, or principal officers of the port) all such certificate goods shall be forfeited, and the persons who shall cause the same to be re-landed, or be concerned in unshipping the same, or to whose hands the same shall knowingly come, or with whose privity the same shall be re-landed, shall forfeit double the amount of the draw-back, together with the vessels, boats, horses, cattle, and carriages made use of in landing or removing the same; one moiety to her majesty, and the other to them that shall inform, seize or sue for the same, in any court of record at Westminster, or in the Exchequer in Scotland, within five years after the offence committed.

115. Sect. 17. If any officer of the customs shall connive or assist in any fraud relating to such certificate goods, such officer (over and above other penalties) shall forfeit his office, and be incapable of serving her majesty, and suffer six months imprisonment; and if any master or other person belonging to any ship shall assist in or connive at the fraudulent landing such certificate goods, he shall (over and above all penalties) suffer imprisonment six months.

116. Sect. 19. The master of every ship carrying certificate goods to Ireland, shall take from the collector in Great Britain a duplicate of his content under the hand and seal of the collector and comptroller (which they are required to deliver without fee) and such master shall deliver such duplicate to the

the officers of the customs in Ireland, before he be permitted to land such goods.

117. Sect. 24. As to securities taken upon exportation of wrought silks and other commodities mentioned in stat. 11 *Will. III. cap. 10. (Concerning India goods)* in case there be no prosecution in three years, or judgment be not obtained in two years, the same shall be void, in like manner as the plantation bonds.

118. Sect. 25. If any officer of the revenue, having the custody of any bonds hereby required to be delivered up to be cancelled, shall upon reasonable request neglect to deliver up such bonds, he shall answer to the party grieved all his damages, with treble costs.

119. Sect. 27. If any officer of the customs shall embezzle any goods lodged in any warehouse in his custody, he shall forfeit double the value of the goods embezzled to the party grieved, with costs.

120. Stat. 12 *Ann. stat. 2. cap. 8. sect. 11.* The commissioners shall, where goods are brought into her majesty's storehouses for security of the customs, cause all such goods which shall have remained there twelve months, the duties not paid or secured, to be publicly sold by auction, and the produce is first to be applied to the payment of the freight, primage, warehouse-room, and other charges, next the customs, and the overplus to the proprietor.

121. Sect. 13. All collectors, surveyors, or other inferior officers of the customs shall be deemed to continue in their offices, notwithstanding the death or removal of any of the commissioners who deputed such officers, until the deputation of such officers be by the said commissioners, or any superior authority, revoked.

122. Stat. 3 *Geo. I. cap. 7. sect. 40.* All drawbacks and abatements out of any duties upon goods imported or exported, shall be continued till the duties shall cease and determine.

123. Stat.

123. Stat. 5 Geo. I. *cap.* 11. *sect.* 1. If any foreign brandy, arrack, rum, strong waters, or spirits, shall be imported into Great Britain, in any vessel under the burthen of fifteen tons (except one gallon for the use of each seaman) every such vessel, with her tackle, &c. or the value thereof, shall be forfeited, and may be seized by any officer of the customs; and after seizure and condemnation the principal officers of the customs in the place are to cause such vessel to be broke up, and the materials sold.

124. Sect. 2. If any rum shall be imported in any cask not containing twenty gallons, (except for the seamen's use) such rum, or the value, shall be forfeited; but if it shall appear to the principal officers of the customs at the port of importation, that such rum was for the use of the master or seamen, or imported by merchants without fraud or concealment, the officers may admit such rum to an entry.

125. Sect. 3. In case any foreign goods shall, by any collier, fisher-boat, or other coasting vessel, be taken in at sea, or out of any vessel, to be landed or put into any other ship, &c. within the limits of any port, without payment of the duties, such goods shall be forfeited, and the master of such collier, &c. shall forfeit treble the value, unless in case of necessity, of which such master shall give notice, and make proof before the chief officers of the customs of the first port where he shall arrive; the master, or other person taking charge of the ship, out of which such goods shall be taken in at sea, shall forfeit treble the value, one moiety to the king, the other to the informer.

126. Sect. 4. All goods not reported, and found after clearing the ship by the proper officers of the customs, shall be liable to forfeiture.

127. Sect. 5. No bond given for the exportation of coffee, tea, or other certificate goods exported to Ireland, shall be delivered up, or any draw-back allowed, till a certificate be produced from the collector,

lector, comptroller, and surveyor of the customs in Ireland, or any two of them, where the goods shall be landed, testifying the landing; and the condition of all such bonds shall be, to produce such certificate in six months from the date, (danger of the seas and enemies excepted) and if no such certificate be produced in six months, the commissioners of the customs in England or Scotland shall cause such bonds to be put in suit, unless they find cause to forbear the same.

128. Sect. 6. If any goods prohibited to be worn here, or foreign goods shipped out for ports beyond sea, shall be unshipped or put on shore, (unless in case of distress, or in presence of a custom officer) such goods shall be forfeited: and if the master, &c. of any ship wherein the goods shall be laden, suffer them to be unshipped, he shall forfeit the value thereof; and the persons to whose hands the goods shall come, knowing the same to be so unshipped, shall forfeit double the value of the goods, unless he make discovery to the chief officers of the customs in six days after the goods come to his hands, provided the goods shall not have been seized by, or information given thereof to, any officer of the customs before such discovery.

129. Sect. 7. If the package of any such goods shall, with the privity of the master, &c. be opened on board any ship, or put into other form, while the ship remains in port, without leave of the principal officers of the port, the master, &c. shall forfeit one hundred pounds; and if the master, &c. shall suffer such goods to be unshipped, or the package to be opened, or put into other form without leave, such master, &c. shall also suffer six months imprisonment.

130. Sect. 8. Where any vessel of fifty tons, or under, laden with customable or prohibited goods, shall be found hovering on the coasts within the limits of any port, and not proceeding on her voyage,
(windward

(wind and weather permitting) any officer of the customs may go on board, and take an account of the lading, and demand security of the master, &c. by his own bond, to his majesty, &c. in treble the value of the foreign goods on board, with condition, that such vessel (as soon as wind and weather, and the state of such vessel doth permit) shall proceed regularly on her voyage, and shall land such goods in some foreign port. And if such master, &c. shall refuse to enter into such bond, or shall not proceed on such voyage (as soon as wind, weather, and the state of such ship will permit) unless suffered to make a longer stay by the collector or other chief officer, not exceeding twenty days, all the foreign goods on board such vessel may, by any officer of the customs, by direction of the collector or other principal officer, be taken out of the ship and secured; and if such goods are customable, the duties shall be paid, and wool, or any prohibited goods found on board, are declared subject to forfeiture.

131. Sect 9. After such goods are brought on shore and secured, such bonds so given shall be void, and delivered up without fee; and such bonds, not being otherwise discharged, shall, on a certificate under the common seal of the chief magistrate of any place beyond sea, or under the hands and seals of two known British merchants on the place, that such goods were landed there, or on proof by two credible witnesses, that such goods were taken by enemies, or perished in the seas, be vacated and discharged.

132. Sect. 10. No coffee shall be exported but such as shall be contained in the original bale, or in some bale containing the same quantity, or in some bale containing not less than four hundred pounds weight, and the same marks and numbers thereon, with which it was entered, except coffee transported to the plantations, or Ireland.

133. Sect.

133. Sect. 11. So much of this act as relates to the importation of foreign brandy, &c. or to foreign goods, &c. taken in at sea, and to goods found after clearing the ships; and as provides remedies against re-landing goods prohibited, or foreign goods shipped out, or to the opening the package of goods on ships outward bound, or to ships hovering on the coasts, of fifty tons, or under; or as concerns the package in which coffee shall be exported, shall be in force for three years from the 25th of March, 1719, &c. and so much as relates to rum in casks not containing twenty gallons, shall be in force for three years from the 29th of September, 1719, &c. and so much as relates to certificate goods entered for Ireland, shall be in force for three years, from the first of May, 1719, &c.

Revived by 2 Geo. II. cap. 28, and continued to the 29th of September, 1742, &c. by 8 Geo. II. cap. 21.

134. Sect. 12. No wrought silks, Bengalls, stuffs mixed with silk and herba, or muslins, or other calicoes, of the manufacture of Persia, China, or East India, shall be imported into Ireland from any place other than Great Britain, on forfeiture of the goods, or value thereof, as also of the ship, with all her guns, tackle, &c. one moiety to the king, the other to the seizer or prosecutor in any of the courts of record in Dublin. And if any officer of the customs in Ireland shall connive at the fraudulent importation of such goods, or take upon him to seize them, and by collusion delay the prosecution, he shall forfeit five hundred pounds, and be incapable of holding any office under his majesty.

135. Sect. 13. All goods saved out of any ship forced on shore or stranded (not being wrecked goods, or Flotsham, Jesham, or Lagan) shall, after salvage and other charges paid, be liable to the like customs, draw-backs, and allowances, as such goods would be liable to in case they were regularly imported.

136. Sect. 15. If any silks, callicoes, linens, or stuffs, printed, painted, &c. in Great Britain, shall be found without a mark denoting that the duties have been paid or charged (except on board ships for exportation) the same shall be forfeited, and may be seized by any officer of the customs or excise. And the person in whose custody they shall be found, shall forfeit fifty pounds, one moiety to the king, the other to the seizer or prosecutor, in any court of record at Westminster, or the Exchequer in Scotland; provided that the goods so recovered shall not be delivered out of the custom-house warehouse, till marked with a proper mark to be provided by the commissioners.

137. Sect. 24. If any officer of the revenue shall make any collusive seizure of foreign goods, to the intent the same may escape payment of the duties, he shall not only forfeit five hundred pounds, but be incapable of serving in the revenue; and the importer and owner shall forfeit treble the value of such goods, one moiety to the crown, the other to him who will sue for the same in any of the courts at Westminster, or in the Exchequer in Scotland.

138. Sect. 25. Provided that if the officer or importer and owner shall discover such his offence to the commissioners in England or Scotland within two months, so as his accomplices be convicted, he shall be acquitted.

139. Sect. 26. If any person other than the officer, collusively seizing, or the importer and owner of the goods, shall, within three months after such seizure, discover to the commissioners any person guilty of such fraud, so as he be convicted, such discoverer shall receive one half of his majesty's share of what shall be recovered on conviction.

140. Sect. 27. In all cases touching which no special distribution is provided by this act, one moiety of the forfeitures herein mentioned shall be to the crown, and the other to the prosecutor in any of the

the courts at Westminster, or in the Exchequer in Scotland.

Revived by 2 Geo. II. cap. 28. and continued to the 29th of September, 1742, &c. by 8 Geo. II. cap. 21.

141. Stat. 6 Geo. I. cap. 21. sect. 29. If any foreign brandy, arrack, rum, strong waters, or spirits, shall be imported into Great Britain, or into any port, harbour, or creek thereof, in any ship of the burthen of thirty tons, or under, (except for the use of the seamen, not exceeding one gallon for each) every such ship, with her tackle, as also such brandy, &c. or the value thereof, shall be forfeited, and may be seized by any officer of the customs, and may be prosecuted in any court of record at Westminster, or in the Exchequer in Scotland; one moiety of which forfeiture shall be to his majesty, and the other moiety to the seisor or prosecutor.

142. Sect. 30. After seizure and condemnation of such ship, the same shall be broke up and publickly sold, together with the tackle, and the produce divided, as by the act 5 Geo. I. cap. 11.

143. Sect. 31. Where any ship of fifty tons, or under, being in part or fully laden with brandy, shall be found at anchor, or hovering within two leagues from the shore, and not proceeding on her voyage, wind and weather permitting, it shall be lawful for any of his majesty's ships of war, or armed sloops, appointed for guard of coasts, or for the commander of any sloop or boat in the service of the customs, or any officer of the customs, to compel the master of such ship to come into port, and such ships shall be subject to the same regulations as ships which hover within the limits of any port are subject to by 5 Geo. I. cap. 11.

144. Sect. 32. If the master, or other person taking charge of such ship, shall suffer any brandy, or other uncustomed or prohibited goods, to be put out of the ship into any boat or bottom to be laid on land, or shall suffer any wool, woollfells, mortlings, yarn of wool,

wool-flocks, fullers earth, fulling clay, or tobacco-pipe clay, to be put on board such ship, to be carried beyond sea, he shall, besides the other penalties, suffer six months imprisonment.

145. Sect. 33. For the admeasurement of such ships, take the length of the keel within board (so much as she treads on the ground) and the breadth within board by the midship beam, from plank to plank, and half the breadth for the depth, and multiply the length by the breadth, and that product by the depth, and divide the whole by 94, the quotient will give the contents of the tonnage.

146. Sect. 34. If any officer of the customs be forcibly hindered, wounded, or beaten in the due execution of their office, by any persons armed with club or any weapon, tumultuously assembled to the number of eight or more, every such person, or such as shall act in their assistance, shall, by order of the court before whom they shall be convicted, be transported to some of the plantations in America for such term as the court shall think fit, not exceeding seven years, as by 4 *Geo. I. cap. 11.*

147. Sect. 35. If such offenders shall return into Great Britain or Ireland before the expiration of the said term, they shall have execution awarded, as persons attainted of felony, without benefit of clergy.

148. Sect. 36. If any such offender shall, within two months after his offence, and before conviction, discover two or more of his accomplices to the commissioners of the customs in England or Scotland, so as two of them be convicted, he shall have forty pounds for every offender so discovered, and shall be acquitted of his offence.

149. Sect. 37. If any other person shall, within three months after such offence, discover to the commissioners any person guilty, so as such offender be convicted, such discoverer shall receive the like reward of forty pounds for every offender, over and above any other reward on account of the goods which

which shall be recovered by means of such discovery, or on account of the penalty which shall be recovered for the running the goods.

150. Sect. 38. The commissioners of the customs shall cause the said rewards of forty pounds to be paid by the receiver-general of the customs, out of any public monies in his hands, under the management of the said commissioners, on producing a certificate of the judge before whom the cause was tried, certifying the conviction of the offender; and the money so paid by the receiver-general, shall be allowed in his accounts.

151. Sect. 39. If prohibited or customable goods shall be found by any officer of the customs in the custody of any persons being in a hoy, lighter, barge, boat, or wherry, on the water, or coming direct from the water-side, without the presence of an officer; or if such goods, upon the information of one credible person, be found in any house or place, on a search made, as by 13 and 14 *Car. II. cap. 11.* is directed, such officers may put the said goods in the king's warehouse in the next port, till the claimers make proof, to the satisfaction of the commissioners of the customs, (if such stop shall be made within the ports of London and Edinburgh) that the duties have been paid or secured, or that the same had been bought in a lawful way, or that the goods had been compounded for, or condemned in the Exchequer at Westminster or Edinburgh, or been delivered by writ of that court respectively, and that the prohibited goods had been compounded for, condemned, or delivered; in which case such goods shall be delivered without charge: and if such goods shall be stopped in any other ports, the claimers shall make the like proof to the collector, or one of the other principal officers of the customs in the port, which proof shall be transmitted to the commissioners for their directions touching the delivery of such goods without charge to the claimers, or for the seizing and

prosecuting the same, as the commissioners shall see cause.

152. Sect. 40. Provided such proof be made within ten days after the goods have been stopped, in failure whereof the same shall be seized and prosecuted.

153. Sect. 41. If upon such prosecution, where no application has been made to the commissioners, the property of the goods shall be claimed; and if any doubt arise, whether the duties were paid or secured, or the goods had been compounded for, condemned, or delivered, or bought in a lawful way, the proof shall be incumbent on the claimer, and not on the prosecutor. And if a verdict shall pass for such claimer, or if the officers shall become nonsuit, or forbear or discontinue prosecution; or if judgment shall be against the officers; the claimer shall, above the recovery of his goods, or the value thereof, have costs, which costs shall be esteemed a full satisfaction for his damages.

154. Sect. 42. Where the claimer of such goods shall make proof, so as to induce the commissioners to order the delivery of the goods; if the owners shall receive any damage by such stop, they shall receive the goods without charge or delay, and may bring their action against the officer for damages.

155. Sect. 43. If any officer of the customs be desirous to seize and prosecute the goods, notwithstanding any directions of the commissioners for delivery of the goods, such officer may seize and prosecute the same; in which case the officer so prosecuting shall be liable to be sued by the owner for recovery of the same, or the value thereof, with costs; or if the commissioners shall not order the delivery of the goods, the owner may nevertheless sue for the recovery thereof, with costs and damages, in any court of record at Westminster, or in the Exchequer in Scotland,

156. Sect. 44. The offences in this act relating to the customs, or to uncustomed or prohibited goods (except as herein otherwise provided) shall be tried and determined in any court of record at Westminster, or in the Exchequer in Scotland.

157. Stat. 7 Geo. I. stat. 1. cap. 21. sect. 10. The times for exportation of goods of his majesty's plantations, and all foreign goods, shall be enlarged; so that where allowances or draw-backs are made upon exportation of foreign goods imported, all merchants shall have three years time from the importation to export the same, accounting such importation from the master's report of the ship.

158. Stat. 8 Geo. I. cap. 15. sect. 7. The duties payable to the crown on the exportation of any goods of the produce or manufacture of Great Britain, shall cease, except such goods touching which a special provision is herein after made.

159. Sect. 8. This act shall not determine or lessen the duties payable upon the exportation of allom, lead, lead-ore, tin, leather tanned, copperas, coals, wool cards, white woollen cloths, Lapis Calaminaris, skins, glue, coney-hair or wool, hares-wool, hair, horses, and litharge of lead.

160. Sect. 9. Any person may export out of any part of this kingdom, in which there is a custom or collector, all such goods of the produce and manufacture of Great Britain, as may be lawfully exported, without paying any duty (other than the goods excepted) so as entry be first made in the Custom-house, expressing the quantities and qualities of the goods, and so as the same be shipped by the proper officer, on failure whereof the goods to be liable to the duties.

161. Sect. 13. The duties upon beaver-skins to be imported shall be computed as if they had been valued at two shillings and sixpence *per* skin, according to which value there shall be paid for every skin

sixpence and no more, to be distributed in proportion to the several subsidies.

162. Sect. 14. Upon exportation of beaver skins there shall be allowed a draw-back of a moiety of the duties paid or secured, and no more.

163. Stat. 8 *Geo. I. cap. 18. sect. 1.* If any foreign brandy or spirits shall be imported in any ship of forty tons, or under, (except for the use of the seamen, not exceeding two gallons for each) such ship with her tackle, and all such brandy, &c. or the value thereof, shall be forfeited, and may be seized by any officer of the customs, and prosecuted, as by the act 6 *Geo. I. cap. 21.*

164. Sect. 2. After seizure and condemnation of such ship, the principal officers of the customs in the port are to cause the hull of such ship to be burnt, and the tackle to be publickly sold to the best advantage.

165. Sect. 3. If any boat, barge, or galley, rowing or built to row with more than four oars, shall be found upon the water, or in any place within the counties of Middlesex, Surry, Kent, or Essex, or in the Thames, or within the limits of the ports of London, Sandwich, or Ipswich, or the members or creeks to them belonging, such boat, &c. with her tackle, or the value thereof, shall be forfeited, and may be seized by any officer of the customs; and the owners thereof, or any persons using or rowing in such boat, &c. shall forfeit forty pounds, and after seizure and condemnation, the principal officers of the customs in the place are to cause such boat, &c. to be burnt, and the tackle, &c. to be publickly sold to the best advantage.

166. Sect. 4. This act shall not extend to any barge or galley belonging to the king or royal family, or to any long-boat, yaul, or pinnace belonging to any merchant ship, or to such boat, &c. as shall be licenced by the admiralty in writing, which licences shall be granted without fee.

167. Sect.

167. Sect. 5. No such licence shall be granted, but upon security given to his majesty by the owner of such boat, &c. by bond, in such penalty as the Admiralty shall find reasonable, with condition that the same shall not be made use of in clandestine running of uncustomed and prohibited goods.

168. Sect. 6. All persons found passing knowingly with foreign goods, landed from any ship without due entry and payment of duties, in their custody, from any of the coasts, or within twenty miles of the coasts, and shall be more than five in company, or shall carry offensive arms, or wear any disguise, or shall forcibly resist any officers of the customs or excise in the seizing of run goods, shall be deemed runners of foreign goods, and being convicted, shall be adjudged guilty of felony, and be transported to the plantations in America for seven years, in the same manner as felons are to be transported by 4 Geo. I. cap. 11. and 6 Geo. I. cap. 23. And if such offenders shall return into Great Britain or Ireland before the expiration of the seven years, they shall have execution awarded, as as persons attainted of felony, without benefit of clergy.

169. Sect. 7. If any runner of foreign goods shall, within two months after his offence, and before conviction, discover two of his accomplices to the commissioners of the customs or excise, so as they be convicted, he shall receive forty pounds for every offender convicted, so as the value of the goods recovered for the king's use exceed fifty pounds, and he shall be acquitted of his offence.

170. Sect. 8. If any other person shall, within three months after such offence, discover to the commissioners any person guilty of such offence, so as he be convicted, such discoverer shall have the like reward of forty pounds for every such offender, over and above any other reward on account of the goods
or

or penalties recovered, so as the value of the goods recovered for the king's use exceed fifty pounds.

171. Sect. 9. The commissioners of the customs and excise shall cause the several rewards of forty pounds to be paid by their receivers-general or cashiers, out of any public money in their hands, in proportion to the duties payable on the goods so run, upon producing a certificate of the judge before whom such offender shall be tried, certifying his conviction.

172. Sect. 10. If any person shall receive or buy any goods clandestinely run, and shall be thereof convicted upon appearance or default, on the oath of one witness, or by confession, before one justice of peace for the county, &c. where the offence shall be committed, or the offender found, he shall forfeit twenty pounds, one moiety to the informer, the other to the poor of the parish, to be levied by distress and sale of goods, by warrant of the justices, and for want of distress, he shall be committed to prison for three months.

173. Sect. 15. If any person shall be guilty of any offence contrary to any act for preventing the clandestine running of customable or prohibited goods, or of receiving such goods, knowing the same to be run, he may be prosecuted by action, bill, &c. and thereupon a *capias* in the first process, specifying the sum of the penalty sued for, shall issue; and such person shall be obliged to give bail by natural-born subjects, or denizens, to such *capias*, and at appearing shall likewise give bail, to answer the forfeitures, or to yield his body to prison.

174. Sect. 16. All seizures of vessels of the burthen of fifteen tons, or under, made by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods from ships inwards, or for re-landing certificate or debenture goods from ships outwards; and all seizures of horses, cattle, or carriages, for being used in the removing of such goods, shall

be heard and determined by any two justices of peace, residing near the place, in such manner as by 6 Geo. I. cap. 21. except as herein is excepted, and their judgment shall be final, and not liable to any appeal or *certiorari*.

175. Sect. 17. Any two justices for London or Westminster shall have the like power in determining such seizures as shall be made within those cities.

176. Sect. 18. If any goods brought into any port within this kingdom from any other port within the same, by coast cocquet, &c. be delivered to the customer, or collector and comptroller of the place of arrival, and sufferance given from such customer, &c. the master or mariner taking charge of such ship, consenting thereto, shall forfeit the value of the goods; and if any goods of foreign product coming coastwise, shall be landed without the presence of an officer of the customs, such goods, or the value, shall be forfeited.

177. Sect. 23. The forfeitures in this act shall be prosecuted by bill, &c. in any of the courts at Westminster, or in the Exchequer at Edinburgh, (except where it is otherwise directed) one moiety to the crown, the other to the prosecutor.

178. Sect. 26. Persons sued for any thing in pursuance of this act, may plead the general issue, &c. and the defendant, on a verdict, &c. shall recover treble costs.

179. Sect. 27. This act shall continue for two years, commencing from the twenty-fifth of March, 1722, and from thence to the next session of parliament.

Continued by 8 Geo. II. cap. 21. to the the twenty-ninth of September, 1742, &c.

180. Stat. 8 Geo. I. cap. 31. sect. 1. The ground called Wool-key in London, in the occupation of the commissioners of the customs, shall be vested in Hugh Cholmly, Esq. surveyor-general of the customs,

toms, John Selwyn, Esq. receiver general, and Thomas Jett, Esq. one of the auditors of his majesty's land revenues, and their heirs in trust for the crown, charged with the payment of two thousand five hundred pounds, with interest, and with the annual rent of five hundred and fifty pounds to the wardens and assistants of the town and parish of Sevenoaks, and of the free school of Queen Elizabeth in Sevenoaks, and their successors for ever.

181. Sect. 2. The said payments shall be made out of any monies to arise of any customs upon importation or exportation in England, Wales, or Berwick, at the chief office for receipt of customs in the port of London.

182. Sect. 3. In case the said rent be behind, being demanded, it shall be lawful for the said wardens and assistants to maintain an action of debt against the receiver-general having money in his hands of the customs.

183. Stat 9 Geo. I. cap. 21. sect. 1. The customs under the management of the commissioners of England and Scotland may be put under the management of one commission for the whole united kingdom, or of several commissions for England and Scotland, as his majesty shall think fit.

184. Sect. 2. It shall be lawful for his majesty to increale the number of commissioners as shall be thought proper for the said service.

185. Sect. 7. If any person (other than the exporter) shall discover to the commissioners, or any officer of the customs, any frauds committed, either by the exporter of tobacco or other goods, or any other person in aid of him, whereby his majesty is defrauded, such person shall have one half of the officer's or prosecutor's share of what will be recovered by such discovery, the charges of prosecution being deducted; and the commissioners are to cause such charges to be paid equally by the crown and
the

the prosecutor, and the persons assisting in such fraud, so discovering, shall be acquitted of their offence.

186. Sect. 8. If any tobacco, or other foreign goods, be taken on board any coasting vessel in parts beyond sea, or out of any ship at sea, or at any place other than the port from whence such goods shall be certified, the said goods, and double the value thereof, shall be forfeited, and the master of the coasting ship shall forfeit the value of the goods.

187. Sect. 9. If any person, other than the owner of the goods so shipped coastwise, shall discover to the commissioners, or any officer of the customs, any frauds committed, either by the owner of the goods, or any other person in aid of him, whereby his majesty is defrauded in his duties, such person shall have one half of the officer's or prosecutor's share of what will be recovered by such discovery, &c.

188. Sect. 10. The penalties in this act may be prosecuted in any court of record at Westminster, or in the Exchequer at Edinburgh, and one moiety shall be to his majesty, and the other moiety to such as will sue.

189. Sect. 11. Any person sued for any thing done in pursuance of this act, may plead the general issue.

190. Stat. 11 Geo. I. cap. 7. sect. 1. The clauses in the act of tonnage and poundage 12 Car. II. cap. 4. and in the several subsequent acts, viz. 9 Will. III. cap. 23. of the further subsidy; 2 Ann. cap. 9. of the one third subsidy; 3 Ann. cap. 5. of the two thirds subsidy; 2 Will. and Mar. stat. 2. cap. 4. of the old impost; 4 Will. and Mar. cap. 5. of the additional impost; 7 Will. III. cap. 20. of the duty of twenty-five per cent. upon French goods; and 3 Ann. cap. 4. of four per cent. upon unrated drugs, for ascertaining the

the value of goods imported, according to the oaths of the importers, so far as the same relate to the particular goods mentioned in a book of rates herein after mentioned, shall be repealed.

191. Sect. 2. In lieu of the duties *ad valorem* hereby repealed, there shall be paid for the old subsidy the several rates mentioned in an additional book of rates, signed by the Right Honourable Spencer Compton, Esq; speaker of the House of Commons. [See page 432.] The said duties to be paid on importation, which last mentioned book of rates and every rule therein, shall be of force, as if they were inserted in this act.

192. Sect. 3. Where any of the said goods mentioned in the said book of rates, are liable to the payment of the further subsidy, the one third subsidy, the two thirds subsidy, the old impost, the additional imposts, the additional duty on French goods, or the further duty on unrated drugs, according to the values set thereon for the old subsidy, the same shall be paid proportionably, according to the value set thereon in the book of rates last mentioned for the old subsidy, and not according to the oath of the importer.

193. Sect. 6. The several duties on the said unrated goods shall be collected in such manner, and with such discounts, as are mentioned in the several acts of parliament.

194. Sect. 7. The value of such goods as may be omitted in either of the books of rates shall be ascertained by the oath or affirmation of the merchant, in the presence of the customer, collector, comptroller and surveyor, or any two of them.

195. Sect. 8. It shall be lawful for the collector and comptroller, or other proper officers, to open such goods paying duty *ad valorem*; and if it shall appear, that such goods are not valued by such oath or affirmation according to the true value, the importer

importer shall, on demand made in writing by the customer or collector and comptroller of the port, deliver all such goods into his majesty's warehouse; and on such delivery the customer or collector, with the privity of the comptroller, shall, out of any money in his hands, pay to the importer the value of such goods affirmed, with an addition of the duties paid, and of ten *per cent.* above the value, taking a receipt, as if they had been sold; and the commissioners shall cause the goods to be publickly sold, and out of the produce the money advanced shall be repaid to the collector, to be replaced, and the overplus shall be paid to the sinking fund.



A N

Additional Book of Rates, &c.

W I T H

R U L E S

SIGNED BY THE

Right Honourable *Spencer Compton*, Esq.

Speaker of the Honorable House of Commons.

A.

ARCHELIA, the hundred weight
 Ashes, called Weed-ashes

L. s. d.

0 18 0

0 10 0

B.

Babies, jointed, the dozen
 Bags, called Runnet-bags
 Balls for children, the groce
 Bark of oak, the hundred weight
 Beads, { of jet, the pound
 { of horn, the groce
 Beer, called Spruce-beer, the barrel, cont. 42 gallons
 Binding for brooms, the hundred weight
 Birds, voc. { Singing-birds, the dozen
 { Birds, not rated
 Bladders

2 0 0

0 4 0

1 0 0

0 10 0

0 5 0

0 5 0

2 10 0

0 16 8

0 9 0

0 12 0

0 0 4

Botarge

Customs.

433

	£.	s.	d.
Botargo, the pound	0	1	0
Bowles, or Buckets, of wood, the dozen	0	3	4
Boxes, vocat. { Money-boxes, of wood, the groce	0	15	0
{ Pill-boxes, the groce, containing 12 dozen nests, each nest 4 boxes	0	5	0
{ Snuff-boxes, of wood, plain, the doz.	0	10	0
{ of horn, plain	1	0	0
{ of ivory, or tortoise-shell	2	0	0
Brass, wrought, not rated, the pound	0	1	4
Bread, or Biscuit, the hundred weight	0	6	8
Brooms, called Whisk-brooms, the dozen	0	0	4

C.

Cabinets of amber, the piece,	3	0	0
Calpins for fans, the dozen	0	7	6
Calves Velves to make rennet, the hundred weight	1	0	0
Candles { green, the pound	0	1	0
{ white, or yellow	0	1	6
Cans, of wood, the dozen	0	3	4
Caps, of Cotton, or thread	0	6	8
Cases, { for bottles, not exceeding 12 bottles	0	3	4
{ if above 12 bottles	0	5	0
Cask, empty, the ton	1	10	0
Chairs, matted, the dozen	2	10	0
Cocker-nuts, for cane-heads, the thousand	0	10	0
Copper-ore, the hundred weight	0	2	6
Copper, part wrought, the hundred weight	6	0	0
Copper, fully wrought, not rated	9	6	8
Corks, ready-made, the groce	0	1	8
Cucumbers, pickled, the gallon	0	2	6

D.

Down, the pound	0	1	6
Drugs, vocat. { Adeps Ursi	0	2	0
{ Ambra Liquida	0	8	0
{ Aqua Fortis, the bottle, four gallons	2	5	0
{ Auriculæ Judæ, the pound	0	1	0
{ Baccæ Alkakingi	0	1	0
{ Balsamum Copaiva	0	2	6
{ Barbadoes Tar	0	0	3
{ Bitumen Judaicum	0	0	6
{ Capita Papaverum, the thousand	0	5	0
{ Chameffitys, the pound	0	0	6
{ Chelæ Cancrorum,	0	0	3
{ Cinnabaris Nativa, not of India	0	10	0
H h			
Colophonia			

	£.	s.	d.
Colophonia, the hundred weight	0	10	0
Cornu Cervi Calcinatum, the pound	0	0	8
Cornu Unicornu, each	0	10	0
Cortex Clatheriae, the hundred weight	1	10	0
Cortex Limonum vel Aurantiorum, } the pound	0	0	6
Cortex Caryophyllorum	0	0	6
Cortex Peruvianus	0	2	6
Cranium Humanum, each	0	1	0
Cowitch, the pound	0	1	0
Cream of Tartar, for dyers, the hun- } dred weight	2	10	0
Dens Apri, the pound	0	2	0
Dens Equi Marini	0	2	0
Eboris Rasurae	0	0	2
Essence of Lemons	0	6	8
Fechia Brugiata, the hundred weight	0	10	0
Flores Camaemeli, the pound	0	0	6
Flores Meliloti	0	0	6
Granadilla Peruviana	0	4	0
Gummi Copal	0	0	10
Lapis Hibernicus, the hundred wt.	1	0	0
Lapis Hyacinthi, the pound	0	4	0
Lapis Magnetis	0	1	0
Lapis Nephriticus	0	5	0
Lapis Ostiocola	0	0	6
Lapis Rubinus	0	1	0
Lapis Sapphirus	0	1	0
Lapis Smaragdus	0	1	0
Lapis Spongiae	0	1	0
Lapis Topazae	0	1	0
Mother of Pearl Shells, not of India	0	1	0
Oleum Anisi	0	5	0
Oleum Cariophyllorum	0	10	0
Oleum Carui	0	5	0
Oleum Cinamomi, the ounce troy	0	5	0
Oleum Cimyni, the pound	0	4	0
Oleum Juniperi	0	2	0
Oleum Nucis Muscatae Liquidum	0	6	8
Oleum Origani	0	5	0
Oleum Palmae, the hundred weight	1	0	0
Oleum Rhodie, the pound	2	10	0
Oleum Sassafras	0	4	0
Oleum Thymae	0	5	0
Oleum Vitrioli	0	1	0
Orange Jessamine, or other perfumed } oils	0	5	0
Chymical oils, not rated	0	2	0
			Pom-

Drugs, vocat.

Customs.

435

	£.	s.	d.
Pompholix	0	0	4
Rhine Hurst, the hundred weight	1	0	0
Radix Bistortae	0	10	0
Radix Cassuminiar, not of East-India, the pound	0	5	0
Radix Enulae Campanae, the hundred weight	1	0	0
Radix Eringii, the pound	0	0	6
Radix Hypocacuanæ	0	6	8
Radix mei Athamantici	0	0	6
Radix Phu	0	0	6
Radix Serpentariae	0	2	6
Radix tormentillae, the hundred weight	0	10	0
Rezina Jalapii, the pound	0	10	0
Rezina Scamonii	0	10	0
Salop, not of India	0	1	0
Sal Prunellae	0	0	6
Sal Succini	0	4	0
Sal Tamarisci	0	5	0
Sal Tartari	0	1	0
Sal Vitrioli	0	1	0
Sal volatile Armoniaci	0	2	0
Sal volatile Cornu Cervi	0	2	0
Saccharum Saturni	0	1	0
Sevum Cervinum	0	0	6
Spiritus Cornu Cervi	0	2	0
Spiritus Vitrioli	0	0	6
Sulphur Vivum, the hundred weight	0	10	0
Tartarum Vitriolatum, the pound	0	1	0
Turpentine, not rated, the hundred weight	2	0	0
Ungulae Alcis, the hundred	0	10	0

Drugs, vocat.

E.

Earthen-ware, except China, not rated, the pound	0	0	10
Edging for hats of Caddas, the dozen	0	5	6
Enamel, the pound	0	4	0

F.

Foils for fencers, the dozen	0	15	0
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G.

Grocery, vocat.	Pimento, of the British plantations, the pound	0	0	6
	Liquorish, in powder, the hundred wt.	2	0	0
	Plumbs, dried, the pound	0	0	6
	Raisins, not rated, the hundred weight	0	10	0
	H h 2			

Grocery,

	£.	s.	d.
Grocery, voc. Raisins of Lipra or Belvidera	0	11	0
Perspective- { large, not exceeding three feet	1	0	0
glasses, { large, exceeding three feet	2	0	0
{ small, the dozen	1	0	0
Glass, broken, the hundred weight	0	2	6
Glover's clippings	0	5	0
Graves for dogs	0	3	4

H.

Hay, the load, 36 trusses, each 56 pounds	2	0	0
Horns of cows, or oxen, the hundred	0	6	8
Horn-lips, the hundred, five score	0	2	0
Hair, voc. { Cow, or Ox-hair, the hundred weight	1	10	0
{ Horse-hair, the pound	0	2	6
{ Human hair	0	6	8
Hoans, the hundred, five score	5	0	0

I.

Iron of Ireland, &c. unwrought. not rated, the ton	7	0	0
Iron-ore	0	10	0
Old Bushel-iron	2	10	0
Iron-rod, less than a quarter of an inch, the hundred weight	1	0	0
Iron-pig, from the plantations, the ton	1	0	0
Iron-wares, not rated, the hundred weight	2	0	0
Juice of Limes, the gallon	0	0	6

K.

Kelp, the ton	3	0	0
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L.

Lard, the pound	0	0	3
{ Alexander, the ell	0	1	6
Borclaps	0	10	0
Damask and Diaper Toweling of Russia, half } an ell in breadth, the yard	0	0	4
Damask or Diaper Toweling, except of Ireland and Russia, not rated, to be at the rates of Silesia			
Linen, { Neck-cloths, except India, the dozen	0	9	0
voc. { Oil-cloth, the ell	0	1	0
{ Sail-duck, except from India, the hundred } 120 ells	5	0	0
{ Sheets, old, the piece	0	1	6
{ Spanish or Portugal Linen, the ell	0	1	4
{ Trillets	0	1	8

M.

M.

	£.	s.	d.
Maps, in frames	0	5	0
Matting, { of Barbary, or Portugal	0	1	6
{ of Holland, the yard	0	0	6
Leaf metal, except gold, the packet, 250 leaves	0	0	6
Metal for battery, the hundred weight	6	0	0
Morels, the pound	0	4	0
Mum, the barrel, 42 gallons	2	10	0

N.

Nuts, called Chesnuts, the bushel	0	5	0
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O.

Oil of Hempseed, the ton, 252 gallons	20	0	0
Oil of Olives, not rated	32	0	0

P.

Pails, or Kits of wood, the dozen	0	6	8
Painters colours, not rated, the pound	0	0	6
Atlas, ordinary; Genoa royal, fine Genoa, Medium fine, one Holland royal, Medium paper, each ream	0	14	0
Second Genoa royal, second Genoa medium, second fine Holland royal, each ream	0	10	0
Fine large Post, weighing 15 pounds per ream, each ream	0	10	0
Cartridge-paper, ordinary Elephant, fine large Post, under 15 pounds per ream, each ream	0	7	6
Chancery double, each ream	0	5	0
Ordinary Royal, each ream	0	5	0
Paper, { And the unrated Paper hereafter mentioned, are to pay the new duties of 20 per cent. and 10 per cent. granted by the acts 10 An. cap. 9, and 12 An. cap. 9, according to the following rates: viz.			
Second Writing, imperial, the ream	2	15	0
Second Writing, super royal	2	0	0
Second Writing, royal	1	7	6
Second Writing, medium	1	0	0
Second one Holland, royal	0	10	0
Blue Paper, for sugar-bakers	0	5	10
Ordinary royal			
Fine Printing crown	0	5	0

H h 3

Paper,

		L.	s.	d.
Paper, voc.	{ Fine Printing fool's cap	}	0	5
	Brown cap			
	Second ordinary Printing, crown	}	0	3
	Second ordinary Printing, fool's cap			
	Ordinary pot			
	Fine Genoa pot			
	Second Genoa pot			
	Brown Paper, the bundle, 40 quires			
	{ Small post, the ream		0	3
	Pears, the bushel		0	7
	Pencils, the groce		0	5
	Pewter, old, the hundred weight		0	10
	Pickles, not rated, the gallon		2	10
	Plat, Bermudas, for hats, the pound		0	2
	Plate, of gold, the ounce		0	0
	Platters of wood, the shock, 60		4	0
	Powder of brass, for japanning, the ounce		0	10
	Prints of paper, except India		0	0
			0	0
Q.				
	Quilting, not of India, the yard		0	5
R.				
	Racket-hoops, the dozen		0	1
	Rennet, the gallon		0	0
S.				
	Saufages, the pound		0	1
	Scale-board, the hundred weight		0	3
	Scoops of wood, the dozen		0	3
Seed, voc.	{ Clover-feed, the hundred weight		0	10
	Cole-feed, the quarter		1	0
	Hemp-feed, the last, ten quarters		1	0
	Lucerne-feed, the hundred weight		0	10
	Maw-feed, the pound		0	0
	Millet-feed, the hundred weight		0	16
	Shavings for hats		1	5
	Sheep's guts, dried, the groce		0	1
	Silk, mixed with gold or silver, except India, the	}	3	10
	pound, 16 ounces			
Skins, voc.	{ Coney-skins, the dozen		0	1
	Deer-skins, Indian, half dressed, the lb.		0	1
	Dog-skins, undressed, the piece		0	0
	Elk-skins, the skin		0	6
	Fisher-skins, the piece		0	5
	Goat-skins, in the hair, not rated, the dozen		1	0
	Hair-skins		0	0
	Lamb-skins, dressed in allom, the hundred	}	1	0
	five score			
				Lamb-

		£.	s.	d.
Skins, voc.	Lamb-skins, dressed in oil	4	0	0
	flink, dressed	0	10	0
	flink, undressed, in the wool, the hundred, } fix score	0	5	0
	undressed, in the wool	0	10	0
	Lion-skins, the piece	0	10	0
	Moose-skins	0	10	0
	Musquash, the skin	0	0	6
	Panther-skins, the piece	1	0	0
	Pelts, except Goat-pelts, the hundred, 5 score	1	10	0
	Pelts of goats, dressed, the dozen	0	10	0
	undressed	0	5	0
	Rackoons, the skin	0	0	6
	Shagreen-skins	0	1	8
	Sheep-skins, dressed, the dozen	0	5	0
	Swan-skins, the piece	0	3	4
	Tails or Tips of Sable	0	2	0
	Tyger-skins	0	10	0
	Vizer-skins	0	5	0
	Wood-shocks, the skin	0	5	0
	Shovels of wood, unshod, the dozen	0	10	0
	Shuttles for weavers	0	10	0
	Skates of wood, shod	0	1	3
	Slays for weavers	0	6	8
	Snowting, the hundred weight	1	0	0
Soap,	{ hard, not rated, the hundred weight	3	0	0
	{ soft, not rated	1	10	0
	Soaper's waste, the ton	0	10	0
	Socks of thread, the dozen pair	0	6	8
	Spelter of Germany, the hundred weight	2	10	0
Spirits, voc.	Brandy, of France, the ton, 252 gallons	30	0	0
	Spain or Italy	15	0	0
	not rated	20	0	0
	Citron-water, the gallon	1	0	0
	Geneva	0	1	0
	Hungary-water	0	10	0
	Rackee of Turkey	0	5	0
	Rosa Solis, and cordials not rated	0	10	0
	Rum	0	1	8
	Visney from Turkey	0	10	0
	Usquebaugh	0	10	0
Stockings	of thread, the dozen pair	1	15	0
Stones, voc.	Grave-stones, of marble, unpolished, the foot	0	0	4
	polished	0	0	8
	of other stone	0	0	1
	Marble, polished, except Grave-stones and } paving	0	1	0
	Marble-blocks, the solid foot	0	4	0

	£	s.	d.
Stones, voc.	{ Marble Paving-stones, rough, the foot		
	polished		
	{ Paving-stones, not of marble		
	{ Pibble-stones, the ton		
	{ Slates, in frames, the dozen		
	{ Tables of Slate, in frames, the piece		
			without frames
Spinal, fine, the pound	0	1	8
Spokes for cart-wheels, long the thousand	0	10	0
short	6	0	0
Swingles, the groce	3	0	0
	3	0	0

T.

Tails of cows, the hundred, containing five score	0	10	0
Tape, open, the dozen pieces	0	2	6
Tea-tables, {	lacked, except India		
	unlacked, the piece		
Ticking, not rated. the piece, containing thirty-six yards	0	2	6
Tortoise-shell, the pound	1	10	0
Truffles	0	4	6
	0	8	0

V.

Valonia, for dyers, the hundred weight	0	7	0
Vermachelli paste, the pound	0	0	6
Vinelloes	1	10	0

W.

Wafers, the pound	0	1	8
Water, voc.	{ Pyrmont-water, and other Waters, not		
	rated, the dozen bottles, each cont.		
	three pints		
	{ Pyrmont-water, &c. the dozen bottles,		
	each exceeding three pints		
	{ Spa-water, the basket, containing one		
	hundred and fifty flasks, three pints		
	each		
Bay or Myrtle-Wax, the pound	0	0	6
Weld, for dyers, the hundred weight	0	5	0
Wheels for spinning, the piece	0	1	6
Wood, voc.	{ Anchor-stocks the piece		
	{ Battens, six inches and a half wide, the		
	hundred, containing 120		
	{ Beech boards, two inches thick		
	{ Beech plank, above two inches, the		
	load, fifty feet		

Stones,

Customs.

441

		£.	s.	d.
Woods, voc.	Beech quarters, under five inches, the hundred, cont. 120	2	0	0
	Beech quarters, five inches, and under eight	5	0	0
	Box-wood, the ton	8	0	0
	Deals, not rated, exceeding twenty feet, the hundred, containing one hundred and twenty	15	0	0
	of twenty feet, or under, not rated	5	0	0
	Fire-wood, the fathom	0	8	0
	Fir quarters, under five inches, the hundred, containing one hundred and twenty	2	0	0
	five inches, and under eight	5	0	0
	Hand-scoops, the dozen	0	2	0
	Hand-spikes, the hundred, cont. one hundred and twenty	1	0	0
	Kilderkin staves	0	2	6
	for shipping, 8 inches square, and under	5	0	0
	Knees of oak for shipping, above 8 inches, to pay as timber, the load	1	10	0
	small, for wherries, the hundred, cont. 120	0	10	0
	Lath-wood, the fathom	2	0	0
	Mohogany timber, the ton	8	0	0
	Oak, boards, under two inches thick, and under fifteen feet long, the hundred, containing one hundred and twenty	8	0	0
	plank, the load, fifty feet solid	3	0	0
	Timber, the load	1	10	0
	Olive-wood, the ton	10	0	0
Wooden Tubs, the dozen	Pailing-boards, the hundred, cont. one hundred and twenty	0	6	8
	Round wood	2	0	0
Wainscot-boards, the inch, or foot, containing twelve feet in length, and one inch in thickness		0	1	6
		0	1	6
Ufers,	single, under twenty-four feet, the hundred, containing one hundred and twenty	2	0	0
	double, of twenty-four feet and upwards	0	5	0
Wood for dying, voc.	Nicarago wood, the hundred weight	0	8	0
	of other sorts, not rated	0	10	0
Wool, voc.	Coney-wool, the pound	0	0	6
	Eltridge-wool, in foreign ships, the hundred weight	1	8	0
Wool,				

		£.	s.	d.
Wool, voc.	{ Hare's-wool, the pound	0	0	3
	{ Sheep's-wool, from any other place			
	{ than mentioned in the Book of Rates	0	0	3
Wire of brass, or copper, not rated, the hundred weight		6	10	0

Y.

Wick-yarn, the dozen pounds	0	9	0
Worsted yarn, two or more threads, the pound	0	3	0
Yokes for oxen, the pair	0	1	0



R U L E S

RULES, ORDERS,

A N D

REGULATIONS.

ANY thing in this Additional Book of Rates, is not to alter the method for ascertaining the value upon unrated goods imported of the product of the East-Indies, or other parts, within the limits of the charters granted to the united company of merchants of England trading to the East-Indies ;

Or, to the charging any duty upon wood or lumber, which are to be imported duty free, by 8 Geo. I. *cap.* 12. during the continuance of the said act ;

Or, to the charging any duty upon drugs used in dying, which are to be imported duty-free, by virtue of 8 Geo. I. *cap.* 15.

The value of goods omitted (other than those of India, Persia, or China) shall be ascertained by the oath, or affirmation, of the merchant, in the presence of the customer, collector, comptroller, and surveyor ; or any two of them : and the collector or comptroller, or other proper officers of the customs, may open such goods ; and the importer shall, on demand in writing, deliver such goods into his majesty's warehouse ; and the customer, or collector, shall pay to such importer the value of such goods so sworn to, with an addition of the duties paid, and of ten *per cent.* taking a receipt, as if they had been sold ;

fold ; and out of the produce, the money paid shall be repaid to such customer or collector, to be replaced, and the overplus shall be paid to the sinking-fund, by the title of under-rated goods imported under-valued.

SP. COMPTON,

Speaker of the House of Commons:

195. Stat. 11 Geo. I. *cap.* 30. sect. 16. If any person shall knowingly harbour, keep, or conceal, any prohibited or run goods, liable to any duties of customs or excise, the party offending shall forfeit all such goods and treble the value.

196. Sect. 17. The value of such goods shall be taken according to the prices, as the best goods of the like sort shall bear in London.

197. Sect. 18. If any person shall offer to sale any goods prohibited, or which have been, or shall, by the party be pretended to have been run, all such goods, with the package, shall be forfeited, and may be seized by the party to whom the same shall be offered to sale ; or by any officer of the customs or excise : provided that, if such seizure be made within the limits of the bills of mortality, then within twenty-four hours ; and if it be made in any other place, then in forty-eight hours next after such seizure, such goods shall be secured in manner following : viz. if such goods are prohibited, or liable to customs, and not to excise and inland duty, they shall be secured in some ware-house, under the care of the officers of the customs, near the place : and if the seizure be made at a place too remote from any such ware-house, then they shall be lodged in some excise-office near the place of seizure ; but if such goods be liable to an excise, then they shall be put into some office of excise, or under the custody of some officers of excise near the place.

198. Sect.

198. Sect. 19. Every person exposing such goods to sale, shall, besides forfeiting such goods, forfeit also the treble value, to be estimated as aforesaid.

199. Sect. 20. Prohibited, or run-goods, as such bought by any person, together with the package, shall also be forfeited, and may be seized from the buyer, either by the seller, or any other officer of the customs or excise, provided that within the like respective times, as before, such goods be secured in like manner as before directed.

200. Sect. 21. Where any person shall buy prohibited goods, which by the seller shall be pretended to be prohibited or run, the buyer, besides the goods, shall also forfeit treble the value, to be estimated as aforesaid; provided that it is not intended that, as well the party buying as the party selling, shall both forfeit the treble value of the same parcel; but the party, whether buyer or seller, who shall first prosecute the other, shall be discharged from the treble value of every parcel; ; on account whereof, the other party shall be prosecuted with effect; provided that, if within one month after such seizure by the party, a prosecution is not commenced and carried on by the party who shall seize; the warehouse-keeper, or other person in whose custody such goods, &c. shall be secured, may prosecute for the forfeiture of such goods.

201. Sect. 32. If, upon the tryal of any suit relating to his majesty's customs, or excise. or the duties upon salt, or any other duties, any question shall arise, Whether any person be an officer of any of the said offices, proof shall be admitted that such person exercised such office, without producing the deputation whereby such officer was appointed; and such proof shall be legal evidence, unless, by other evidence, the contrary shall appear.

202. Stat. 12 Geo. I. cap. 28. sect. 1. It shall be lawful for the commissioners of the customs and excise,

cise, to cause all such goods which shall be seized for unlawful importation, or for non-payment of duties, or other cause of forfeiture, to be proceeded against; and they may cause all such tea and coffee which shall be seized within the cities of London and Edinburgh, and condemned to be publicly sold there; and for such tea and coffee as shall be seized in other places, the commissioners may cause the same, after condemnation, to be brought to and publicly sold in London or Edinburgh respectively; and, for such foreign brandy, rum, or other foreign excisable liquors, which shall be seized, the commissioners shall, after condemnation, cause the same to be publicly sold to the best bidder, at such places as they shall think proper.

203. Sect. 3. The officer, or other person, making such seizure, shall be allowed one third of the sum arising from the sale of such tea, coffee, or liquors, free from charges.

204. Sect. 3. The commissioners, if they think fit, may cause such tea as cannot be sold for five shillings the pound, to be destroyed; and the person making the seizure to be rewarded, as the commissioners shall think proper, such reward not exceeding one shilling and six pence in each pound of tea.

205. Sect. 4. The commissioners of the customs shall cause the remaining part of the produce of such sales, after paying the reward to the officer, and the charges for such seizures, as are made by any officer of the customs, to be paid into the Exchequer in lieu of his majesty's moiety.

206. Sect. 5. The commissioners of excise shall cause the remaining part of the produce of such sales, after paying the reward and charges for such seizures as are made by any officer of excise, to be paid, as now practised, in lieu of the king's moiety.

207. Sect. 6. No person shall be entitled to any reward on the seizure of any goods by virtue of this act,

act, unless notice be given to the next officer of excise, or to the supervisor of the district, within forty-eight hours, who shall take account of the goods; nor shall the goods be removed without a permit signed by the officer of excise, or the supervisor of the district, under the penalty of such goods being re-seized as forfeited, by any other officer of the customs or excise.

208. Sect. 7. If any officer of the customs or excise shall trade in tea, coffee, brandy, or other exciseable liquors, he shall not only lose his employment, but also forfeit fifty pounds to any person who shall inform or sue for the same; and be rendered incapable of having any place in the revenue: which last forfeiture shall be recovered in any court at Westminster, or in the Exchequer at Edinburgh.

209. Sect. 8. If any foreign goods shall be seized for any cause of forfeiture, and any dispute shall arise, Whether the duties have been paid, or legally compounded for; or concerning the place from whence such goods were brought; in such cases, the proof shall lie on the claimer of the goods, and not on the officer; the act of 6 Geo. I, *cap.* 21, notwithstanding.

210. Sect. 9. Nothing in this act shall hinder the officers, or other persons, from recovering the penalties provided by the laws, as they now stand.

211. Sect. 14. It shall be lawful for the commissioners of the customs to cause any ship, boat, or galley, which shall be seized and condemned, according to 8 Geo. I. *cap.* 18, to be used by the officers of the customs, together with the tackle; the officers who seized the same being first paid their shares.

212. Sect. 15. If the commissioners shall not think fit to make use of such ship, boat, &c. they shall cause the principal officers of the customs in the place to see the hull thereof burned.

213. Sect. 16. One justice of the peace shall have power to administer an oath to persons skilled in the value

value of the goods, vessels, boats, &c. mentioned to have been seized in the information exhibited before any justices of the peace, to view the same, and to make a return of the quality and value thereof to such justices in a limited time; and after the goods, vessels, &c. shall have been condemned by such justices, they shall be publicly sold to the best bidder, at such places and times as the commissioners shall think proper.

214. Sect. 17. It shall be lawful for any searcher, or other proper officer of the customs, after the entry of goods whereon there is a draw-back, or premium, or of goods prohibited to be used here, or pepper, to open and examine any bale or package; and, if the goods shall be found to be right entered, the searcher shall, at his own charge, cause them to be repacked; (which charge shall be allowed by the commissioners, if they think it reasonable); but if the officer shall find such goods to be less in quantity or value than is expressed in the exporter's indorsement on his entry, or entered under a wrong denomination, whereby his majesty would have been defrauded; all such goods may be seized, and shall be forfeited; and the owner shall lose the benefit of the draw-back for such goods, and the value thereof.

215. Sect. 18. If any goods, on which duties are payable, or which are prohibited to be exported, shall be shipped for parts beyond sea, without a warrant, or without the presence of an officer of the customs appointed for that purpose; all such goods, or the value thereof, shall be forfeited; one moiety to the crown, the other to him that will seize or sue for the same.

216. Sect. 19. It shall be lawful for the commissioners to cause all goods which shall be brought into his majesty's warehouses for security of the customs, or other duties, and shall have remained there six months, to be publicly sold, and the produce to be

be applied as by the act 12 Ann. stat. 2, *cap.* 8, par. 212.

217. Sect. 21. No draw-back shall be allowed for tobacco, or other foreign commodities exported from Great-Britain, or Ireland, to the Isle of Man.

218. Sect. 22. No tobacco, wine, brandy, East-India, or other commodities, other than such as are of the product of the Isle of Man, shall be brought from that island to Great-Britain or Ireland, or within the limits of any port; and if any vessel, having on board such goods, shall be found within the limits of any port; such vessel, together with the tackle, and all such goods so found on board, or the value thereof, shall be forfeited; and every person who shall take such commodities out of such vessel, or carry the same on shore, contrary to this act, or be assisting therein, shall forfeit one hundred pounds, or suffer six month's imprisonment; at the discretion of the court in which he shall be convicted.

219. Sect. 23. If any person shall enter any foreign goods for exportation to parts beyond sea, other than the Isle of Man, in order to obtain the draw back, and such goods shall be carried to that island and landed there, the exporter shall forfeit the draw-back, as also the treble value of the goods; and the master of the vessel shall be liable to the same penalties, and shall also suffer six months imprisonment.

220. Sect. 24. The Isle of man shall be inserted in the oath upon all debentures for foreign goods exported, where the exporter is to swear that such goods are not intended to be landed in Great-Britain or Ireland.

221. Sect. 25. It shall be lawful for the Treasury on the behalf of his majesty, and for the right honourable James, earl of Derby, and all persons claiming under the said earl, or his ancestors, to contract for the purchase of any estate which the said

earl, or such other person have in the island of Man; and upon executing such contracts, it shall be lawful for the Treasury, out of any duties upon importation or exportation in England, Wales, or Berwick, to order the payment of such money as shall be agreed on for such purchase.

222. Sect. 27. If any person in prison for want of bail, (being taken by *capias* out of any court at Westminster, or Edinburgh) upon any information for having been concerned in the unshipping any goods liable to duties, either customs, excise, or salt, or any goods prohibited; or for having any such goods knowingly come to his hands; or upon any information in relation to any fraud about any draw-back, or certificate-goods; or in relation to any other fraud, in order to lessen the revenue of the customs, excise, or salt duty; or upon any penal statute relating to the said revenues, shall neglect to appear or plead to such information to be delivered to such person, or to the goaler, or turnkey, at the prison, by the space of one term, judgment shall be entered against him by default; and, if judgment shall be obtained against any such person, and he shall not pay the sum recovered, execution shall be issued not only against the body, but also against his real and personal estate, though he continue in prison,

223. Sect. 28. It shall not be lawful for any person to enter any information in the courts at Westminster, or Edinburgh, for the recovery of any penalty inflicted by any of the laws of the customs, excise, and duty upon salt, unless in the name of the attorney-general, or of some officer of one of the said revenues: and if any information is entered in any other person's name, all proceedings are declared void; and the courts shall cause such information to be taken off the file.

224. Stat. 1 *Geo. II.* stat. 2. *cap.* 17. sect. 1. The subsidies and duties payable upon importation of wine-les, shall cease.

225. Sect. 2. Wine-les imported into Great-Britain, shall pay the same duties as wine, according to the several growths.

226. Sect. 3. These duties shall be collected as the duties upon wine.

227. Sect. 4. No draw-back shall be allowed for wine-les exported.

228. Sect. 5. *Lignum-vitæ* imported on the conditions mentioned in the act 8 *Geo. I.* *cap.* 12, shall be free from customs.

229. Stat. 9 *Geo.* *cap.* 35, sect. 1. All subjects of Great-Britain who, before the twenty-seventh of *April*, 1736, have incurred any penalty for clandestine running prohibited goods, or foreign goods liable to customs and excise; or for making false report or entry of any ship: or for breaking bulk before report; or for altering the package of goods; and any persons who have beat or hindered any officer of the customs or excise in the execution of his duty; or who have given or offered a bribe to any officer, shall be indemnified.

230. Sect. 2. All his majesty's subjects may plead this act of indemnity without fee, but only one shilling and four pence to the clerk who shall enter such plea.

231. Sect. 3. Every person who shall take benefit of this act, and who shall have brought any action or prosecution against any officer of customs or excise; or any person assisting such officer, for any thing done on occasion of any matters by this act released, shall, before he shall be admitted to such plea, discharge such action and prosecution.

232. Sect. 4. If any person, who shall claim the benefit of this act, shall, after such claim, com-

mence any action or prosecution against any officer of customs or excise; or other person who shall have assisted such officer, for any thing done on occasion of any of the matters discharged by this act, such claim shall be a release to such officer or other persons; and such officer, or other persons, may plead the general issue.

233. Sect. 5. Every person who shall take benefit of this act, and shall afterwards commit any of the offences before-mentioned, or any of the offences hereafter mentioned, shall be liable to be prosecuted, not only for such new offence, but also for the offences committed before this act, and for all bonds given for his majesty's use called Smuggling Bonds.

234. Sect. 6. This act shall not discharge any judgment actually levied before this act, nor any judgment in respect to such part as belongs to the informer, until such person who would take benefit of this act, shall pay to such informer the costs of such suit.

235. Sect. 7. If any person, guilty of any of the offences before mentioned, for which such person is liable to be transported, shall take the benefit of this act, and shall afterwards commit any of the said offences, for which he is now liable to be transported, every such person shall suffer death, as in cases of felony, without benefit of clergy.

236. Sect. 8. All persons who have compounded with the Treasury, or any of the barons of the Exchequer, or the commissioners of the customs or excise, in respect of the above-mentioned offences, shall make good such compositions; or, in default thereof, shall be excluded from all benefit of this act; except out of this act all seizures of goods, vessels, horses, or carriages, forfeited by any law relating to customs or excise; and also except all customs due upon lawful importation of goods, and debts due to his majesty upon bond or other contract concerning the lawful importing of goods; and all bonds
given

given by officers of the customs or excise for the use of his majesty ; and all demands due to his majesty in respect of debentures or certificates wrongfully obtained, or become void ; and all demands for customs, excise, and other duties, concerning which there is any prosecution depending.

237. Sect. 9. In case any judgment shall be given for his majesty in any suits depending on the eleventh of May, 1736, for any demands for money paid upon debentures, or certificates wrongfully obtained or become void ; it shall be lawful for the Treasury to compound or discharge the same, notwithstanding any appropriation thereof by act of parliament ; so as all monies received by such composition, shall be applied in such manner as the original demands would be.

238. Sect. 10. Upon information upon oath before any one justice of peace, that any persons, to the number of three, have been assembled for running of goods, and have been armed with offensive weapons ; such justice shall grant his warrant to the constables and peace-officers, to take to their assistance as many of his majesty's subjects as may be thought necessary for the apprehending every person against whom such information shall be given ; and such justice shall (if upon examination he find cause) commit all the said persons to the next county-goal, without bail, until they be discharged by law ; and every such person, upon proof of his being assembled and armed, in order to be assisting in the clandestine running prohibited or uncustomed goods ; and, upon conviction of such offence, shall be adjudged guilty of felony, and shall be transported as a felon for seven years.

239. Sect. 11. Every person who shall apprehend any person guilty of the offences last mentioned, shall have, for every offender convicted, fifty pounds ; and if any person shall be maimed, or dangerously wounded, in endeavouring to apprehend such offend-

ers, every person so maimed or wounded, shall, upon such conviction, have fifty pounds over and above any other reward; and, in case any person shall be killed in pursuit after such offenders, the executors, or administrators of such person killed (upon certificate of the justice of assize, or the two next justices of peace, of such person being so killed,) shall have fifty pounds over and above any other reward.

240. Sect. 12. If any offender shall, within three months after such offence, and before conviction, discover two accomplices to the commissioners of the customs or excise, so as they be convicted, the offender discovering shall have fifty pounds for every offender so convicted, and shall be discharged of such offence.

241. Sect. 13. All persons who, to the number of two in company, shall be found passing within five miles from the sea-coasts, or any navigable river, with horse or carriage, whereon there shall be laden more than six pounds of tea, or brandy exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods, above the value of thirty pounds, landed without due entry and payment of duties, and shall carry offensive arms, or wear any disguise, or shall forcibly resist any officers of the customs, or excise, in the execution of their office, shall be deemed runners of foreign goods within the act 8 Geo. I. *cap.* 18, to prevent clandestine running of goods, &c. and the proof of entry and payment of duties, and of the manner how the said persons so found with the goods came by the same, shall wholly lie on such persons; and all persons convicted of the said offences, shall be guilty of felony, and shall be transported as felons for seven years.

242. Sect. 14. All goods so found, and all arms found with such persons, and the furniture to their horses and carriages, and the package of all goods so found, shall be forfeited.

243. Sect.

243. Sect. 15. If any officer of the customs or excise shall be maimed, or dangerously wounded, by any offenders herein last mentioned, in the execution of his office, or in the apprehending such offenders, all such officers and persons so maimed and wounded, shall, upon the conviction of such offenders, have fifty pounds over and above any other reward; and, in case any person be killed in the apprehending such offenders, the executors, or administrators, of such person killed, upon certificate of the justice of assize, or the two next justices of the peace, shall have fifty pounds over and above any other reward.

244. If any other person shall, within three months after any of the offences last mentioned shall have been committed, discover to the commissioners of the customs or excise, any person guilty of such offence, so as such offender be convicted, such discoverer shall have fifty pounds for every offender so convicted, over and above any other reward.

245. Sect. 17. The commissioners of the customs and excise, in England and Scotland respectively, shall cause the several rewards in this act mentioned, to be paid to the person entitled thereto, by the receiver-general, or cashier of the customs and excise, out of any public-money in his hands, under the management of the said commissioners, upon producing a certificate of the judge of the court before whom such offenders shall be tried, certifying their conviction; or upon producing such certificate of such persons being so killed, as aforesaid; and if any dispute shall arise between the persons entitled, the same shall be divided in such shares as to the commissioners shall seem just.

246. Sect. 18. Upon information upon oath before one justice of peace, that any persons are loitering within five miles from the sea-coast, or from any navigable river; and that there is reason to suspect they wait with intent to be aiding in running goods,

it shall be lawful for such justice to cause such persons to be brought before him, and to grant warrants for apprehending such offenders; and if such persons shall not give a satisfactory account of themselves, or make it appear that they are not concerned in carrying on of any fraudulent trade, and are not at such place with intent to carry on the said clandestine practices; every person who shall not give such satisfaction to such justice shall be committed to the house of correction, to be whipped, and kept to hard labour for any time not exceeding one month; and the commissioners of the customs or excise shall cause to be paid to the person informing of such offender, a reward of twenty shillings for every such offender so taken.

247. Sect. 19. If such person, so brought before such justice, shall desire time for making it appear, that he is not concerned in any of the fraudulent practices abovementioned, such person shall not be punished; but in such case it shall be lawful for such justice to commit such person to the common gaol, until he shall give such account, or give security not to be guilty of the said offences.

248. Sect. 20. If any person shall offer tea, brandy, or other spirits to sale, not having a permit; or if any pedlar shall offer such tea, brandy, or other spirits to sale, although such pedlar shall have a permit, it shall be lawful to every person to whom the same shall be offered to sale, to stop such tea, brandy, or spirits, and carry the same to the next warehouse belonging to the customs or excise, and to bring the person offering the same to sale, before any of his majesty's justices of peace, to be committed to prison, and prosecuted for the penalties incurred for such offence; and such tea, brandy, or other spirits, shall be prosecuted in the name of such person who stopped the same, as if the goods had been seized by any officer; and after condemnation of the goods, and commitment of the persons offending,

ing, the persons seizing the same shall be intitled to one third part of the groce produce of the sale of such goods; and in case such persons seizing the said goods shall desire it, the commissioners shall in the mean time cause one shilling for every pound of tea, and one shilling for every gallon of brandy so seized, to be paid to such persons, upon a certificate of such justice, of such offenders being committed, and after sale, the monies so paid shall be replaced.

249. Sect. 21. Persons employed in carrying goods run, in whose custody the same shall be found, knowing the same to be run, and who shall be convicted upon appearance or default, upon the oath of one witness, before one justice of peace, shall forfeit treble the value of such goods; one moiety to the informer, the other moiety to the poor of the parish, to be levied by distress and sale of goods by warrant of such justice; and for want of distress, such offender shall be committed to the house of correction, to be whipped, and kept to hard labour for any time not exceeding three months.

250. Sect. 22. Where any vessel coming from foreign parts, and having on board six pounds of tea, or any foreign brandy, or other spirits, in casks under sixty gallons, (except for the use of the seamen, not exceeding two gallons for each seaman) shall be found at anchor, or hovering within the limits of any of the ports of this kingdom, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, (unless in case of necessity, which the master shall make proof of before the collector or other chief officer of the customs of such port, immediately after the arrival of such vessel into port) all such tea, foreign brandy, and spirits, together with the package, or the value thereof, shall be forfeited, and the same may be seized, or the value thereof sued for by any officer of the customs or excise.

251. Sect.

251. Sect. 23. In case any foreign goods shall by any vessel be taken in at sea, within four leagues from the coasts of this kingdom, without payment of duties, unless in case of necessity, or some other lawful reason, of which the master shall make proof before the chief officer of the customs of the first port where he shall arrive) such goods shall be forfeited; and the master taking in the same, and all persons concerned in the unshipping or receiving of the said goods, shall forfeit treble the value; and the vessels into which the said goods shall be unshipped, shall also be forfeited, any ship so to be forfeited not exceeding the burthen of one hundred tons, and the master of such ship, out of which such goods shall be taken, shall also forfeit treble the value.

252. Sect. 24. If any person shall offer any bribe to any officer of the customs or excise, to do any act whereby his majesty may be defrauded in his said revenues, every person shall for every such offence forfeit fifty pounds.

253. Sect. 25. One moiety of the forfeitures in this act shall be to his majesty, and the other moiety to such persons as shall sue for the same, (except where any other appropriation is made by act of parliament) and the same forfeitures may be sued for in any of his majesty's courts of record at Westminster, or in the Exchequer at Edinburgh, except where provision to the contrary is made by statute.

254. Sect. 26. Any indictment or information for any assault upon any of the officers of the customs or excise may be inquired of, tried, and determined in any county of England.

255. Sect. 27. All goods found concealed on board any ship, after the master shall have made his report at the Custom-house, and not mentioned in the said report, shall be forfeited, and may be seized and prosecuted by any officer of the customs, and the master of such ship, (in case he was privy to such concealment)

concealment) shall forfeit treble the value of the goods.

256. Sect. 28. If any officer of the customs or excise, being on board any vessel within the limits of any port, be forcibly hindered or beaten in the execution of his office, every person so forcibly hindering or beating the said officers, and all such as shall act in their assistance, shall, by order of the court before whom such offenders shall be convicted, be transported for such term as such court shall think fit, not exceeding seven years; and if such offenders shall return into Great Britain or Ireland before the expiration of the term, they shall suffer as felons, without benefit of clergy.

257. Sect. 29. It shall be lawful for any officer of the customs or excise, (producing his warrant or deputation, if required) to go on board any coasting ship within the limits of the ports, and to rummage such ships for prohibited and uncustomed goods, and to stay on board during the time the same shall continue within the limits of such port; and if any person shall hinder any officer of the customs or excise in going or remaining on board such coasting ships, or in the searching thereof, such person shall forfeit one hundred pounds.

258. Sect. 30. If any person who shall keep any house where strong liquors shall be sold by retail, shall knowingly entertain any person against whom process of arrest shall have issued, for any crime in prejudice of the said revenues, and to which the sheriff or other officer shall have returned, that such person cannot be found, and which person shall not have appeared to the said process; or shall knowingly entertain any person who having been in prison for any of the said offences, shall have escaped, or who shall have been convicted, and shall fly from justice, he shall forfeit one hundred pounds, and be incapable of selling strong liquors by retail.

259. Sect.

259. Sect. 31. No persons shall suffer for such entertaining, unless notice shall have been given in two successive Gazettes, of the absconding of the person so entertained, and also by writing fixed to the door of the parish church where such person last dwelt.

260. Sect. 32. Where any process shall issue against any person prosecuted for any offence, contrary to the laws relating to his majesty's revenues of customs or excise, every sheriff, and other persons acting in the offices, shall, upon request of any of the known solicitors for the customs or excise, in writing upon the back of the process, signed by such solicitor, with his name and addition of *solicitor for the customs, or excise*, grant special warrants to persons named by such solicitor; or in default thereof, such sheriff, under sheriff, and other person acting in the office, shall be subject to process of contempt.

261. Sect. 33. Every such sheriff and other person making out such special warrant shall be indemnified from escapes of such offenders, till they be committed to goal, or tendered to the goal-keeper, who is required to receive such persons, and give a receipt for their bodies.

262. Sect. 34. On all trials of seizures, the seizure shall be taken to have been made as set forth in the information, without any evidence; and all judges and justices of peace are to proceed to the trial of the merits of the cause, without inquiring into the seizure.

263. Sect. 35. If any person passing with prohibited or uncustomed goods, and armed with offensive weapons, shall hinder any officer of the customs or excise, who in execution of his duty shall offer to search for or seize any prohibited or uncustomed goods from any person passing with such goods, and armed as aforesaid, by beating the officers or other persons acting in their assistance; it shall be lawful
for

for all officers of his majesty's customs or excise, and all persons by them called to their assistance, who are so resisted, to oppose force to force, and by the same methods that are violently used against them, and by which their lives are endangered, to defend themselves, and execute the duty of their office; and if any person so resisting the officers shall be wounded or killed, and the officers and their assistants shall be prosecuted, such officers, and persons acting in their assistance may plead the general issue, and all justices of peace, before whom such officers and other persons acting in their assistance may be brought, on account of such wounding or killing, are required to admit such persons to bail.

264. Sect. 36. Nothing in this act shall discharge any person from any prosecution on behalf of the united company of merchants of England trading to the East-Indies.

265. Sect. 37. If any action shall be commenced for any thing done in pursuance of this act, the defendant may plead the general issue; and if judgment shall be against the plaintiff, the defendant shall recover treble costs.

266. Sect. 38. Nothing in this act shall restrain his majesty's court of King's Bench, or any of the judges thereof, or the court of justiciary in Scotland, from bailing any person committed for felony by virtue of this act.

267. Stat. 19 Geo. II. cap. 34. sect. 1. If any persons, to the number of three, or more, armed with fire-arms, or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in re-landing goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if
any

any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at, or wound him when on board; he shall be guilty of felony without benefit of clergy.

268. Sect. 2. And persons charged with any of the said offences, before a justice of the peace, by information on oath of one or more credible persons, to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in forty days after the first publication thereof in the Gazette, to the lord-chief-justice, or any other of the justices of the King's Bench, or to some justice of the peace, who thereon shall commit him to goal, to answer the charge against him according to due course of law; which order the clerks of the privy-council shall cause to be forthwith published in the two successive Gazettes, and to be transmitted to the sheriff where the offence was committed; who shall, in fourteen days, cause the same to be proclaimed, between ten in the morning and two in the afternoon, in the market-places, on the market-days, of two market-towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some public place in the said towns; and if such offender shall not surrender, pursuant to such order, or escape after surrender, he shall be attainted of felony without benefit of clergy.

269. Sect. 3. And if any person, after the time appointed for surrender, shall knowingly harbour such offender, he shall, on conviction within one year, be guilty of felony, and transported for seven years.

270. Sect. 4. But nothing herein shall prevent ministers of justice from taking such offender by the

ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law.

271. Sect. 5. Offences relating to the customs or excise, made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower, or forfeiture of lands.

272. Sect. 6. If any officer, or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay one hundred pounds to the executors or administrators of such person killed; so as the sum for beating exceed not forty pounds, nor the loss of goods two hundred pounds; to be recovered and levied as in cases of robbery by the 8th of *Geo. II.*

273. Sect. 7. But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, Whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such also as persons robbed by the 8th of *Geo. II.* are directed to give.

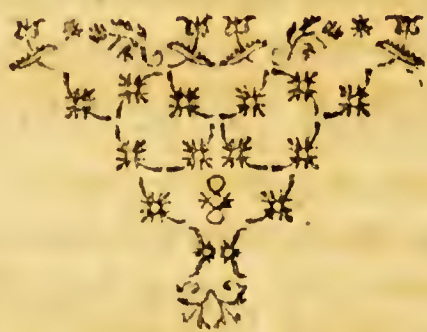
274. Sect. 8. And where the offender shall be convicted in six months, the hundred shall not be liable.

275. Sect. 9. Also the action against the hundred must be commenced within a year.

276. Sect. 10. And every person who shall take, or discover, so that he may be taken, any person so advertised and not surrendering, and cause him to be brought

brought before a judge of the King's Bench, or justice of the peace for London or Middlesex (who shall commit him to Newgate) shall receive five hundred pounds in one month after execution awarded, from the commissioners of the customs or excise respectively: and if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the præmium: and if any person shall be maimed, or grievously wounded, in apprehending such offender, he shall receive fifty pounds over and above such other reward as he may have as apprehender; and if any person shall be killed in apprehending, his executors or administrators shall receive one hundred pounds.

277. Sect. 11. And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted, he shall receive fifty pounds for each, and be discharged of all offences for which no prosecution shall be then commenced.



The Several BRANCHES of the REVENUE at present payable to His MAJESTY in Great Britain, upon Goods and Merchandizes imported, exported, and brought coastwise ; and which are distinguished by the following Denominations : viz.

- | | |
|---|---------------------------------------|
| N ^o . | N ^o . |
| | { I. Subsidy inwards, or Old Subsidy. |
| | { II. Petty Custom. |
| 1 Customs, | { III. Additional Duty. |
| | { IV. One per cent. inwards. |
| | { V. Composition on Petty Seizures. |
| 2 New subsidy | |
| 3 One third subsidy | |
| 4 Two thirds subsidy | |
| 5 Subsidy, 1747 | |
| 6 Subsidies on spirits | |
| 7 Impost on wines and vinegar | |
| 8 Impost on tobacco | |
| 9 Impost, 1690 | |
| 10 Impost, 1692 | |
| 11 Duty on whale-fins | |
| 12 Duty of 15 per cent. on muslins | |
| 13 Duty on spices, pictures, &c, | |
| 14 Additional duty on spices and pictures, and new duty on drugs, &c. | |
| 15 Second 25 per cent. on French goods | |
| 16 Coinage on wine, &c. | |
| 17 Coinage on Spirits | |
| 18 Duty on pepper, raisins, and spice | |
| 19 Subsidy, and one per cent. outwards, with the duties on leather, white woollen cloths, and foreign goods used in dying, exported | |
| 20 Duty on candles | |
| 21 Additional duty on candles | |
| 22 Duty on coals imported ; and on coals, culm, and cinders, brought coastwise | |

- 23 Additional duty on coals imported; and on coals, culm, and cinders, brought coastwise
- 24 Duty on coals and culm for building churches, &c.
- 25 Duty on hops
- 26 Duty on hides, skins, &c.
- 27 Additional duty on hides, skins, &c.
- 28 Duty on Soap and paper, &c.
- 29 Additional duty on soap, paper, &c.
- 30 Duty on coals exported
- 31 Duty on sailcloth
- 32 Duty on wrought plate
- 33 Duty on apples
- 34 Duty on wines, 1745
- 35 Duty on glafs
- 36 Duty on Linen yarn
- 37 Duty on gum senega
- 38 Unrated goods, imported, undervalued
- 39 Prisage and butlerage
- 40 Excise on salt imported
- 41 Excise on liquors imported
- 42 Inland duty on coffee, tea, and chocolate.

I. C U S T O M S.

This branch comprehends, as before-mentioned, the following duties: viz.

- N^o I. Subsidy inwards, or Old Subsidy.
- II. Petty Customs.
- III. Additional duty.
- IV. One per cent. inwards.
- V. Composition on petty seizures.

The branch of Customs (except the One per cent. and Composition on petty seizures) was first granted by 12 Car. II. cap. 4. (see p. 332.) from the twenty-fourth of June, 1660, during the king's life. It was afterwards continued by several acts; and, by 6 Ann. cap. 11. the one half of it was continued to the first of August, 1688; and from thence for ever, by 1 Geo. I. cap. 12. The other half, by 6 Ann. cap. 19, was continued to the first of August, 1714; and thence for ever, by 1 Geo. I. cap. 12.

By 6 Ann. cap. 11. sect. 6. one moiety of the customs is appropriated for the payment of annuities for ninety-nine years; which annuities commenced from the twenty-fourth of June, 1708.

By 1 Geo. I. cap. 12. sect. 1, 2, 15, the other moiety, as also the surplus of the first moiety, after payment of the annuities thereon charged, and the whole thereof after the last day of June, 1808, together with these branches herein after mentioned: viz.

Number 4

- N^o 4 The two thirds subsidy
 12 Fifteen per cent. on muslin
 13 Duty on spice, &c.
 14 Additional duty on spice, &c.
 15 Second 25 per cent. on French goods
 25 Duty on hops,

are made part of the Aggregate Fund by that act established: and, by stat. 9 Geo. II. cap. 23. sect. 17. the duties and revenues which shall arise by licences for vending brandy or spirits, as also the present duties on low wines, strong waters, brandy, rum, arrack, and all other spirits, whether foreign or British; and such duties as shall arise by retailing the same, shall, from the twenty-ninth of September, 1736, be united to, and made part of the General or Aggregate Fund established by 1 Geo. I. cap. 12, and be issued and applied to the uses to which the said fund shall be made applicable.

N^o I. Subsidy inwards, or Old Subsidy.

This duty consists of two distinct parts, Tonnage and Poundage.
 See p. 332, 333.

Tonnage is payable in ready-money, before landing, on all wines imported, except prizage-wines; (see p. 336); and, by the 13th and 14th of Car. II. cap. 11. vinegar, perry, rape of grapes, fyder and fyder-eager, which, by 12 Car. II. cap. 4, were under the common regulations of poundage, are made subject to tonnage for this subsidy; on all which it is to be respectively levied and collected according to several regulations following:

WINES.		Gross Subsidy. per ton.
Rhenish or Hungary Wines (see the note in p. 333)	}	6 0 0
imported into any port by British ships		
By strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	}	7 10 0
Levant wines, imported into London, Bristol, or Southampton, by British ships		
Ditto, by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	}	6 0 0
Into other ports, by British ships		
Ditto, by strangers, or in ships not belonging to Great-Britain, or Ireland, or foreign built,	}	4 10 0
All other Wines, imported into London by British ships		
Ditto, by strangers, or in ships not belonging to Great-Britain, or foreign built	}	6 0 0
Into other ports, by British ships		
Ditto, by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	}	4 10 0

Gross Subsidy.
per ton.

PERRY, Rape of Grapes, Syder, Syder-eager, and Vinegar, imported into any port, (13 and 14 Car. II. cap. 11. sect. 15.) by British	}	4	10	0
Ditto, by strangers		6	0	0

Out of the above duties on Wine, Perry, &c. the merchant is to be allowed twelve per cent. for leakage (see p. 374) But if he thinks that this allowance is less than the actual leakage, he may refuse it, and pay duty for no more than is found by gauging to be contained in the casks on their landing.

It was anciently the method to ascertain the quantity of wine in such cases by filling up the casks out of each other; and hence the terms of Wine entered unfilled or filled.

Upon the importation of wine in casks, there is, by 6 Geo. I. cap. 12. sect. 2. the following allowances to be made out of the gross duty: viz.

WINES.		Discount.
Rhenish Wines, or Wines of the growth of Germany, or which pay duty as such	}	2 per cent.
French Wines, or Wines of the growth of any of the French king's dominions		6 per cent.
Spanish, Portugal, and all other Wines		10 per cent.

So that, according to the particular circumstances of the entry, the neat subsidy to be paid, will be found as follows:

NEAT SUBSIDY, per ton, on all WINES, except PRIZAGE WINES:
viz.

	L.	s.	d.	$\frac{1}{20}$
Rhenish or Hungary Wine, imported into any port, by British, in casks filled	}	5	17	7 4
Ditto, unfilled		5	3	2 8
—by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built, in casks filled	}	7	7	0 —
—Ditto, unfilled		6	9	0 —
French Wines, imported into London, by British, in casks filled	}	4	4	7 4
Ditto, unfilled		3	13	9 12
—by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built, in casks filled	}	5	12	9 12
—Ditto, unfilled		4	18	4 16
—imported into Out-ports, by British, in casks, filled	}	2	16	4 16
—Ditto, unfilled		2	9	2 8
—by strangers, &c. as by British in London	}	4	1	0 —
Levant Wines, imported into London, Bristol, or Southampton, by British, in casks, filled		4	1	0 —
Ditto,				

Customs.

469

	£.	s.	d.	$\frac{1}{20}$
Ditto, unfilled	3	10	2	8
—in flasks or bottles, filled	4	10	0	—
—by strangers, or in ships not belonging to Great-Britain, or Ireland, or foreign built, in casks filled	5	8	0	—
—Ditto, unfilled	4	13	7	4
—in flasks or bottles, filled	6	0	0	0
—imported into other ports, by British, in casks filled	2	14	0	0
—Ditto, unfilled	2	6	9	12
—in flasks or bottles, filled	3	0	0	—
—by strangers, &c. as by British in London, &c.				
Spanish, Portugal, and all other Wines, imported into London, the same as Levant Wines imported into London, Bristol, or Southampton, in casks.				
—imported into Out-ports, the same as Levant-wines imported into other ports in casks.				

NEAT SUBSIDY ON WINES brought into LONDON by Certificate from the Out-ports: viz.

French Wine	1	8	2	8
Levant Wines, except from Bristol or Southampton, in flasks or bottles	1	10	0	0
Ditto, in casks				
Spanish, Portugal, and all other Wines, except Rhenish	1	7	0	0

By 1 Geo. II. cap. 17. sect. 7, 8, no Wines, except of the growth of the dominions of the great duke of Tuscany, in open flasks; or of Turkey; or any other part of the Levant seas, may be imported in flasks.

NEAT SUBSIDY, per ton, on

Perry, Rape of Grapes, Cyder, Cyder-eager, and Vinegar, imported by British, filled	4	10	0	—
Ditto, unfilled	3	19	2	8
—by strangers, filled	6	0	0	—
—Ditto, unfilled	5	5	7	4

The method of computing the aforesaid neat subsidy of tonnage on Wines, &c. is illustrated in the following example: viz.

Two casks, containing one ton of Spanish Wine, unfilled, imported into the port of London, by British, and in a British ship.

The

The gross-duty, per ton, as before,
12 per cent. for leakage

£.	s.	d.	$\frac{1}{20}$
4	10	0	0
0	10	9	12

10 per cent. of the gross duty

3	19	2	8
0	9	0	0

The neat subsidy

3	10	2	8
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And so for all the other various cases of entry.

POUNDAGE is payable (see 12 Car. 2. cap. 4, in page 332; and 11 Geo. I. c. 7. sect. 1, in page 429) in ready-money upon all goods and merchandizes imported, except these following: viz.

WINES, Perry, &c. as being liable to tonnage,
FISH, British, taken and brought by British bottoms,
FRESH FISH,
BEASTIAL, and

All goods mentioned in the Book of Rates, to be Custom Free.

DIAMONDS, Pearls, Rubies, Emeralds, Jewels and Precious Stones, by stat. 4 and 5 W. and M. cap. 5. sect. 2.

It is to be levied and collected according to the particular rates affixed to the respective goods, (see page 337, and page 391); or, if not there rated, according to the real value and price (see the fourth rule of the Additional Book of Rates, in page 443) of the goods, to be ascertained by the oath or affirmation of the merchant, in the presence of the customer, collector, comptroller, and surveyor, or any two of them; except, by 2 and 3 Ann. cap. 9. sect. 6 and 7, such goods as are of the growth, product, or manufacture of the East-Indies, or China, and which are not rated; the subsidy whereof is to be charged according to the gross price, at which they shall be fairly sold by auction, or inch of candle (after a deduction of so much as the neat duties do amount to, and so much as the company do allow to the buyers for prompt-payment, and also 6 per cent. to the company for their charges in keeping the goods till the time of sale); from which rates, values, or prices, this subsidy of poundage is to be taken as follows: viz.

The Gross Duty on

£.	s.	d.
----	----	----

EARTHEN-WARE, not particularly rated in the first book of rates (page 350.) viz. China ware, all other sorts rated in the additional book of rates, (p. 435.) Seven and a half per cent. of the rate, or reduced value of the price at the candle; being for every twenty shillings of such rate or value

0	1	6
---	---	---

GLASS MANUFACTURES, not any where particularly rated in the first book of rates, or rated in the additional book of rates, Seven and an half per cent. of their value upon oath, or of their rate in the additional book of rates; being for every 20s. of such value or rate

0	1	6
---	---	---

The

The GROSS DUTY on

	£.	s.	d.
FISH, dried or salted, (12 Car. II. c. 18. sect. 5.) and cod-fish, or herrings, (unless prohibited) not caught in British or Irish vessels, and cured by Bri- tish or Irish, — Ten per cent. of the rate, or double subsidy ; being for every 20s. of such rate	0	2	0
TOYS FOR CHILDREN, not any where particularly rated in the first book of rates, or rated in the ad- ditional book of rates, — Six and two thirds per cent. of their value upon oath, or of their rates in the second book of rates ; being for every 20s. of such value or rate	0	1	4
All other goods chargeable with the subsidy of pound- age, — Five per cent. of the rate, value, or price ; being for every 20 s. thereof	0	1	0

But out of the aforesaid gross subsidy of poundage,
there is to be allowed the following discounts, viz.

TOBACCO, of the British plantations, (9 Geo. I. c. 21. sect. 3.)	25 p. cent.
—— not of the British plantations, (17th rule of book of rates, 12 Ann. sess. 2. c. 8. sect. 1. 5 Geo. I. cap. 7. sect. 1.)	5 & 8 per cent.
Which allowance of 8 per cent. is not to be deducted on exportation.	
All other goods (17th rule of book of rates, p. 375.)	5 per cent.
The method of computing the aforesaid subsidy of poundage, is illustrated in the following examples, viz.	

EXAMPLE I.

1200 lb. of British plantation Tobacco.

Upon recourse to the head of Tobacco in the letter T, in the book of rates, p. 367, this sort will be found to be rated at 1s. 8d. per pound ; at which rate the quantity proposed amounts to	100	0	0
The gross subsidy, being 5 per cent. of the rate, amounts to	5	0	0
The discount, at 25 per cent. to be deducted, amounts to	1	4	0
	3	15	0

EXAMPLE

EXAMPLE II.

1500 lb. of Spanish Tobacco.

	£.	s.	d.
The amount of the rate, which, as before directed, } will be found to be ten shillings per pound	750	0	0
The gross subsidy at 5 per cent.	37	10	0
The first discount, at 5 per cent.	1	17	6
	35	12	6
The second discount, at 8 per cent.	2	17	0
The net subsidy to be paid	32	15	6

EXAMPLE III.

100 lb. of Italian wrought SILKS, imported from
Italy in a British ship.

The amount of the rate being 1l. 13s. 4d. per pound	166	13	4
The gross subsidy, at 5 per cent.	8	6	8
The discount, at 5 per cent.	0	8	4
The net subsidy to be paid	7	18	4

And after the method of these examples, may the subsidy of poundage on all other species of goods be computed.

The duty of poundage is also payable (after the rate of 5 per cent. of the value on oath) for ships taken as prize, and regularly condemned in the court of admiralty; but it is the practice not to charge them with any other duty whatsoever.

The aforesaid subsidy of tonnage and poundage having been duly paid at importation, if the goods shall be afterwards duly exported, (2d rule of the book of rates, page 372.) to foreign parts within three years (7 Geo. I. cap. 21. sect. 10.) from the master's report of the ship, the exporter is intitled to the Draw-back, or Re-payment, in the following manner.

BOOKS BOUND, (9 Geo. I. cap. 19. sect. 6.)	Draw-back.
BORAX, refined in Great Britain, (17 Geo. II. cap. 31. sect. 3.)	nothing
CABLE-YARN, (6 Ann. cap. 19. sect. 13.)	as unrefined
CALLICOES of East India, China, or Persia printed, painted, stained, or died there, (11 and 12 Will. III. cap. 10. sect. 10.)	nothing
CAMPFIRE, refined in Great Britain (17 Geo. II. cap. 31. sect. 3.)	as unrefined
CANDLES, (23 Geo. II. cap. 21. sect. 36.)	nothing
	Drawback.

Drawback.

COPPER BARS, not imported from East India or Barbary, and not exported by British (9 and 10 Will. III. cap. 26. sect. 19. 12 Ann. sess. 3. cap. 18. sect. 4, 5. 13 Geo. I. cap. 27. sect. 1. 26 Geo. II. cap. 32. sect. 2.)	} nothing
CORDAGE, (6 Ann. cap. 19. sect. 13.)	} nothing
CURRENTS, the hundred weight, (6th rule of book of rates, page 373.) all but	} 0 1 6
HEMP, unwrought, to the British dominions in America, (4 Geo. II. cap. 27. sect. 7.)	} nothing
HOPS, foreign, to Ireland (9 Ann. cap. 12. sect. 27.)	} nothing
IRON and STEEL, foreign, (9 Ann. cap. 6. sect. 55.) to the British plantations in America	} nothing
—wares, foreign, (2 and 3 Ann. cap. 9. sect. 12.) to the British plantations in America	} nothing
ALUM, foreign, (1 Will. and Mar. cap. 22. sect. 4)	} nothing
OYSTERS, French, (10 Geo. II. cap. 30. sect. 4.)	
PAPER, foreign, (10 Geo. II. cap. 27. sect. 4.)	
PEPPER, 8 Ann. cap. 7. sect. 24.)	} nothing
PERRY, the ton (13 and 14 Car. II. cap. 11. sect. 25.)	
PICTURES, (8 Geo. I. cap. 20. sect. 49.)	} nothing
RAPE OF GRAPES, the ton, (13 and 14 Car. II. cap. 11. sect. 5.)	} nothing
SALES, or Sail-cloth, foreign, (4 Geo. II. c. 27. sect. 3.)	
SILKS WROUGHT, viz. Alamodes and Lustrings, (8 and 9 Will. III. cap. 36. sect. 5.)	} nothing
—Bengalls, and Stuffs mixed with silks and herba, of the manufacture of the East Indies, China, or Persia, (11 and 12 Will. III. cap. 10. sect. 10.)	} nothing
—of all other places, (See page 365.)	} two thirds
SNUFE, (12 Geo. I, cap. 26. sect. 5.)	} nothing
SOPE, (23 Geo. II. cap. 21. sect. 36.)	
STARCH, (23 Geo. II. cap. 21. sect. 36.)	
SUGAR of the British plantations, if exported within one year after importation, (6 Geo. II. cap. 13. sect. 9. 19 Geo. II. cap. 23. sect. 1.)	} all
SYDER and Syder-eager, imported (13 and 14 Car. II. cap. 11. sect. 25.) by British, the ton, all but	} 1 0 0
—imported by foreigners, the ton, all but	} 1 5 0
TEA, (18 Geo. II. cap. 26. sect. 5.)	} nothing
TOBACCO of the English plantations, to be consumed on board ships of war in any part of Europe (6 Ann. cap. 22. sect. 13.)	} nothing
Ditto, in ships under 20 tons to Ireland, (8 Ann. cap. 13. sect. 20.)	
N. B. No tobacco may be exported in ships under 70 tons, except to Ireland; nor from any port other than the port at which it was imported; nor, if unmanu-	
L 1	factur'd

factur'd, in any other than the original package of 425 pounds weight, or more, (24 Geo. II. cap. 41. sect. 4, 21, 25.)	Drawback.
In all other circumstances of regular exportation (9 Geo. I. cap. 21. sect. 6. 24 Geo. II. cap. 41. sect. 4, 21, 25.)	} all
TOBACCO STALKS, or stems, separated from the rest of the leaf, and exported by themselves (9 Geo. I. cap. 21. sect. 20.)	} nothing
VINEGAR, (13 and 14 Car. II. cap. 11. sect. 25.) the ton, by British, all but	} 1 0 0
Ditto, by strangers, all but	} 1 5 0
WINE, (4th rule in page 373) the ton, by British, all but	} 1 0 0
Ditto, by strangers, all but	} 1 5 0
WINE-LEES, (which pay duty as wine, 1 Geo. II. cap. 17. sect. 4.)	} nothing
All goods to the Isle of Man, (12 Geo. I. cap. 28. sect. 21.)	} nothing
All other goods to all other places, (2d rule of book of rates, page 372, and 8 Geo. I. cap. 15. sect. 14.)	} half

No. II. Petty Customs, or Alien's Duty.

This duty is payable by (12th rule of book of rates, p. 374) merchant strangers, that is, aliens born, or denizens, on all goods imported liable to the subsidy of poundage, therefore corn, pearl-barley, whale-fins, and whale-oil, are exempt therefrom, when they are imported under the like regulations as tonnage, for in those circumstances the subsidy of poundage is intirely taken away.

Goods liable to the subsidy of tonnage are not subject to this duty, there being an equivalent included in the advanced sum of the several subsidies laid on those goods, when imported by aliens, or in foreign ships. (12 Car. II. cap. 18. sect. 9. 13 and 14 Car. II. cap. 11. sect. 6.)

It is also payable by British upon the following goods, though of British property, when imported in foreign ships; viz.

AQUA VITÆ	Imported in ships not belonging to the people of Great Britain or Ireland, and whereof the master and at least three fourths of the
BOARDS	
BRANDY	
CORN or grain of all sorts, when the old subsidy is taken at the rate, by 12 Car. II.	
FIGS	
FLAX, by 4 Geo. II. cap. 27. sect. 1. rough or undressed flax may be imported free	
HEMP	

MASTS
OLIVE OIL
PITCH
POT-ASHES
PRUNES
RAISINS
ROSIN
SALT
SUGAR
TAR
TIMBER

the mariners are not British; or in foreign built ships altho' owned or manned by British, unless such are taken as prize, and legally condemned. 20 Geo. II. cap. 45. sect. 9.

All goods of the growth, production, or manufacture of Muscovy or Russia

CURRENTS, imported in ships not British built, and whereof the master, and at least three fourths of the mariners are not British.

TURKEY COMMODITIES, ditto.

It is to be levied, according to the respective rates or values of the goods, as affixed or ascertained for the old subsidy, after the following rates, viz.

The DUTY on

	£.	s.	d.
FISH, (12 Car. II. cap. 18. sect. 5.) dried or salted, and cod-fish or herring (unless prohibited) not caught in British or Irish vessels, and cured by British or Irish, — Two and a half per cent. of the rate, or double petty custom, being one half part of such rate, or for every 20s. thereof	0	0	6
All other goods, (12th rule of book of rates, p. 374.) chargeable with the subsidy of poundage, — One and a quarter per cent. of the rate or value, being, one fourth part, or for every 20s. thereof	0	0	3

To be paid in ready money, without discount.

Upon due exportation, as directed for the old subsidy, &c. Draw-back, or re-payment of the duty, must be allowed, as follows, viz.

The Draw-back on

CURRENTS, (6th rule of book of rates) the hundred weight	0	9	4 ¹ / ₂
All other goods			nothing

No. III. Additional Duty.

This duty, as well as the old subsidy, is composed of a *tonnage* and *poundage*, viz.

Tonnage (12 Car. II. cap. 4. sect. 13. p. 335.) is payable for all wines, except *prizage* wines, imported, viz.

The GROSS DUTY per Ton on		£.	s.	d.
WINEs of the growth of France, Germany, (1 Ann. cap. 12. sect. 112. See note in p. 333.) Hungary, Portugal, or Madeira		3	0	0
	of all other places			

To be paid within nine months from the importation, upon the importer's giving good security for the same.

But out of the aforesaid gross duty, the merchant is to be allowed 12 per cent. for leakage, and the 2, 6, and 10 per cent. on wines in casks, as directed for the old subsidy. 8th rule of book of rates, p. 374. 6 Geo. I. cap. 12. sect. 2.

This duty may be secured for nine months; but if the importer chuses to pay down the same at entry, he is, in consideration thereof, to have an allowance of 10 l. per cent. per annum, which for the said nine months is 7 l. 10 s. per cent. 12 Car. II. cap. 4. sect. 13. p. 335.

So that according to the particular circumstances of entry, the net additional duty to be paid or secured, will be as follows, viz.

Net Additional Duty per Ton on all WINEs, except PRIZAGE WINEs, viz.

			£.	s.	d.	$\frac{1}{20}$
Portugal, or Madeira wines, in casks	paid	filled	2	9	6	
		unfilled	2	2	10	1
	secured	filled	2	14	0	
		unfilled	2	6	9	12
French wines in casks	paid	filled	2	11	10	16
		unfilled	2	5	2	17
	secured	filled	2	16	4	16
		unfilled	2	9	2	8
Germany, Rhenish, or Hungary wines, in casks	paid	filled	2	14	3	12
		unfilled	2	7	7	13
	secured	filled	2	18	9	12
		unfilled	2	11	7	4
Levant and all other wines, in casks	paid	filled	3	6	0	
		unfilled	2	17	1	8
	secured	filled	3	12	0	
		unfilled	3	2	4	16
Levant wines in flasks or bottles	paid	filled	3	14	0	
	secured	unfilled	4	0	0	

For

For the method of computation, see the following example.

Two casks containing one ton of Spanish wines, filled or unfilled, and the additional duty paid.

Filled.		Unfilled	
£ 4	0 0	£ 4	0 0
0	0 0	0	9 7 $\frac{1}{20}$
<hr/>		<hr/>	
4	0 0	3	10 4 16
0	6 0	0	5 3 8
<hr/>		<hr/>	
3	14 0	3	5 1 8
0	8 0	0	8 0
<hr/>		<hr/>	
3	6 0	2	17 1 8

Poundage. The goods liable to this duty are Linens, wrought Silks, and Tobacco, on which it is regulated in the following manner.

LINENS, except (7 and 8 Will. III. cap. 39. sect. 1)	}	A moiety, or half of the old subsidy.
Irish, by certificate, and (11 and 12 Will. III. cap. 10. sect. 10) Calicoes, printed, painted, &c.		
WROUGHT SILKS, except (11 and 12 Will. III. cap. 10. sect. 10) East-Indian	}	Ditto
Tobacco of the British plantations, the pound weight		

For the payment of this duty on Linens and wrought Silks, (the respective clauses after the rates of each species, p. 359, 360) the importer is to be allowed twelve months time from the importation, upon his giving security for the same: but if he chuses to pay ready money, he is to be allowed 10 l. per cent. out of the said duty for prompt payment.

For the practical method of computation, take the following example.

100 lb. of Italian wrought silk, imported from Italy, in a British ship.

	£.	s.	d.
The net subsidy, as before	7	18	4
The moiety, or half	3	19	2
The discount for prompt payment at ten per cent.	0	7	11
	<hr/>		
The net additional duty to be paid	3	11	3

For the payment of the duty on Tobacco (the clause after the rates of tobacco, p. 367. 12 Ann. sess. 2. cap. 8. sect. 2. 5 Geo. I. cap. 7. sect. 1. 9 Geo. I. cap. 21. sect. 3.) of the British plantations, the importer becoming bound, with one or more sufficient sureties (approved of by the collector, with the consent of the comptroller) is to be allowed eighteen months, to commence at

at the end of thirty days from the master's report of the ship, or from the entry of the goods within those thirty days, which shall first happen, and to have an allowance of 15 per cent. out of the same; or the tobacco (12 Ann. sess. 2. cap. 8. sect. 5. 5 Geo. I. cap. 7. sect. 1. 24 Geo. II. cap. 41. sect. 32.) may be deposited in warehouses, provided at the charge of the importer, and approved by the commissioners of the customs, on security given by the importer's own bond to pay this duty at the end of fifteen months; but (2 Geo. I. cap. 21. sect. 3.) if the importer chuses to pay down the duty, at entry, he is to have an allowance of 25 l. per cent.

For the method of computation take the following example.

1200 lb. of British plantation tobacco.						
5	0	0	Gross addit. duty, at 1 d. per pound weight	5	0	0
1	5	0	25 per cent. discount. 15 per cent	0	15	0
<hr/>				<hr/>		
3	15	0	To be paid, net addit. duty, to be secured	4	5	0

Upon due exportation within the times limited by law, drawback or re-payment (7 Geo. I. cap. 21. sect. 3.) of this duty must be allowed, or (12 Car. II. cap. 4. sect. 14. The respective clauses next following the rates of linen and silk, p. 359, 365. 12 Ann. sess. 2. cap. 8. sect. 2. 9 Geo. I. cap. 21. sect. 3, 6. 24 Geo. II. cap. 41. sect. 29.) the security vacated, viz.

	Draw-back.
ALAMODES, or LUSTRINGS, (8 and 9 Will. III. cap. 36. sect. 5.)	} nothing
SAILS or Sail-cloth, foreign, (4 Geo. II. cap. 27. sect. 3.)	
TOBACCO of the British plantations, to be consumed or used on board ships of war in any part of Europe (6 Ann. cap. 22. sect. 13.)	} nothing
Ditto, in ships under 20 tons to Ireland, 8 Ann. cap. 13. sect. 20.)	
N. B. No tobacco may be exported in ships under 70 tons, except to Ireland; nor from any port other than the port at which it was imported; nor, if unmanufactured, in any other than the original package of 425 pounds weight, or more, (24 Geo. II. cap. 41. sect. 4, 21, 25.)	
In all other circumstances of regular exportation, (9 Geo. I. cap. 21. sect. 6. 24 Geo. II. cap. 41. sect. 4, 21, 25.)	} all
TOBACCO-STALKS, separated from the rest of the leaf, and exported by themselves, (9 Geo. I. cap. 21. sect. 20.)	
	} nothing

WINE-

WINE-LEES, (which pay duty as wine, 1 Geo. II. cap. 17. sect. 4.)	Draw-back
All goods to the Isle of Man, (12 Geo. II. cap. 28. sect. 21.)	nothing
All other goods, (12 Car. II. cap. 4. sect. 14. 2d rule of book of rates, p. 359. The respective clauses after the rates of each species.)	nothing
	all

No. IV. One per Cent. inwards.

BY 14 Car. II. cap. 11. sect. 35, 36. was granted from 29 September, 1662, during the king's life.

By 1 Jac. II. cap. 1. sect. 4. continued during his life.

By the several acts which continued the rest of the branch of customs continued for ever.

This duty is payable in ready money upon all goods and merchandizes (liable to customs) imported from any port or place of the Mediterranean sea beyond the port of Malaga, into any port of Great Britain, in any ship or vessel that hath not two decks, and doth carry less than 16 pieces of ordnance mounted, together with two men for each gun, and other ammunition proportionable. But British ships exporting from any of his majesty's dominions Fish, (9 Geo. II. cap. 33. sect. 3.) taken and cured by his majesty's subjects only, so that one moiety of their full lading be fish only, in that case the goods or merchandizes imported in the same ship for that voyage, are not liable to this duty.

The practical method of computing this duty is by taking one fifth part of the net old subsidy and additional duty.

Upon exportation not drawn back.

No. V. Composition on Petty Seizures.

ALL goods seized by the officers of the customs, are to be prosecuted to condemnation, either in the court of Exchequer, or before the justices of the peace, &c. and the king's moiety or share paid in to the proper officers, before any writ or order of delivery may be granted, except in the case of (13 and 14 Car. II. cap. 11. sect. 30) perishable goods: but when the seizure is so small, that the custom thereof does not exceed forty shillings, the commissioners of the customs have, by their patent, a power to compound for it; and, in that case, the king's part is to be paid in to the collector of the port of seizure; who is to account for it by the name of Composition on Petty Seizures; which he is to comprehend under the general head of Customs.

No. 2. New Subsidy.

See p. 405, par. 87.

By 1 Geo. III. cap. 1. this branch is continued during the king's life, and made part of the fund for support of his majesty's household, and the honour and dignity of the crown.

It is to be raised, (9 and 10 Wil. III. cap. 23. sect. 7.) levied, or collected, by the same rules, orders, and methods, and under the same penalties and forfeitures, as the Customs.

This branch, as well as the Old Subsidy, is composed of a Tonnage and Poundage.

TONNAGE, (9 and 10 Wil. III. cap. 23. sect. 1, 2, 3, 4.) is payable in ready money upon all wines imported: viz.

Gross New Subsidy, per ton, on

	L.	s.	d.
RHENISH, or HUNGARY WINES, (1 Ann. cap. 12. sect. 112) imported into any port, by British	6	0	0
—by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	7	10	0
LEVANT, and all other WINES, imported into London by British,	4	10	0
—by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	6	0	0
—imported into other ports, by British	3	0	0
—ditto, by strangers, or in ships not belonging to Great-Britain or Ireland, or foreign built	4	10	0

By 9 and 10 Wil. III. cap. 23. sect. 6. as in the eighth rule of the Book of Rates, p. 374; and by 6 Geo. I. cap. 12. sect. 2; out of this Gross Duty, the like allowances and abatements, in all cases, are to be made, under the same restrictions, and in the same manner and form, as are directed for the Old Subsidy; so that, in all cases, except Levant Wines imported into Bristol or Southampton, the net new subsidy will be the same as in every other out-port.

The difference, called the London Duty on Wines, which having been landed and paid duty in any out-port, are afterwards to be removed to London, or within twenty miles of the Royal-Exchange, must be paid under the same regulation, as directed for the Old Subsidy, and is as follows:

Abatements, per gallon, on

	L.	s.	d.
Rhenish Wine, no difference	0	0	0
French Wine, in casks	1	8	2
Spanish			

	£.	s.	d.
Spanish, Portugal, Levant, and all other Wines, in casks	1	7	0
—in bottles or flasks	1	10	0

POUNDAGE, by 9 and 10 Will. III. cap. 23, sect. 4, is payable in ready money (except for Tobacco of the British plantations, which may be secured by bond in all circumstances as the additional duty thereon) upon all goods and merchandize imported, except these following.

WINES, being liable to tonage.

FISH, British taken, and brought in British bottoms.

FRESH FISH.

BESTIAL.

ALL GOODS mentioned in the Book of Rates to be Custom-free: and, by 9 and 10 W. III. cap. 23, sect. 4; 3 and 4 Ann. cap. 23, sect. 4; and 8 Geo. I. cap. 15, sect. 10;

GOODS commonly used in DYING: as,

ALUM of all sorts

ANTIMONIUM, except CRUDUM

BRITISH BERRIES from the plantations

CASSUMBRA

CAKE-LACK

COPPERAS of all sorts

FRENCH BERRIES

GRAIN, or Scarlet-powder

GRAINS of Portugal, or Rota

GRAINS of Sevil, in Berries

LITHARGE of all sorts

PLATAIN

SALT-PETRE

WELD

Woad.

WROUGHT SILKS, Bengals, and Stuffs mixed with silk or herba, of the manufacture of Persia, China, or East-India; and all Calicoes, painted, dyed, printed, or stained there. 11 and 12 Will. III. cap. 10, sect. 10.

WHALE-FINS, Oil, and Blubber, of British fishing, taken in the seas of Newfoundland, or any of the seas belonging to his majesty's plantations, and imported by British in British shipping. 10 and 11 Will. III. cap. 25, sect. 16; 10 Geo. I. cap. 16, sect. 1.

RAW LINEN-YARN of all sorts, and Unwrought Inkle, and Short Spinnel. 24 Geo. II. cap. 46, sect. 1. See BRANCH, Number 36.

BRANDY, and other Spirits, being now accounted for in a separate branch, Number 6.

GUM SENEGA, from any part of Europe. See BRANCH, Number 37.

It is to be levied and collected, according to the several respective rates, values, and prices, as directed for the Old Subsidy: on which rates, &c. it is to be computed in the following manner:

	£.	s.	d.
DRUGS, except Dying Drugs, rated in the Book of Rates, p. 344, imported directly from places of their growth, and in British built shipping, 5 l. per cent. on one-third of the rate, being (by 9 and 10 Will. III. cap. 23, sect. 5) for every 20s. thereof,	0	0	4
EARTHEN-WARE GLASS MANUFACTURES TOYS FOR CHILDREN	} the same as directed for the Old Subsidy		
ALL OTHER GOODS, chargeable with this duty of Poundage (by 9 and 10 Will. 3, cap. 23, sect. 4; 2 and 3 Ann. cap. 9, sect. 6, 7; 11 Geo. I. cap. 7, sect. 3, 7; first rule of Additional Book of Rates, and after the Rates Outwards, page 432) 5 l. per cent. on the rate, value or price; being, for every 20s. thereof,	0	1	0

But out of the aforesaid gross new subsidy of poundage, there is to be allowed the following discounts:

	Discount.
TOBACCO of the British plantations (by 9 and 10 Will. 3, cap. 23, sect. 10; 12 Ann. sect. 2, cap. 8, sect. 1, 2, 3; 5 Geo. 1, cap. 7, sect. 1; 9 Geo. 1, cap. 21, sect. 3) being under the same regulations as for the additional duty thereon; if paid down	25 per cent.
Ditto, if secured	15 per cent.
TOBACCO, not of the British plantations (12 Ann. sect. 2, cap. 8, sect. 1; 5 Geo. 1, cap. 7, sect. 1)	5 and 8 per cent.
Which allowance of 8 per cent. is not deducted on exportation.	

ALL OTHER GOODS (as by the seventeenth rule of the Book of Rates p. 375; 9 and 10 Will. 3. c. 23, sect. 6) } 5 per cent.

For the method of computing this duty, see the Old Subsidy and Additional Duty.

On due exportation within the times limited by law, drawback (7 Geo. 1. cap. 21, sect. 10) or repayment of this duty must be allowed, or the (9 Geo. 1. cap. 21, sect. 3 6; 24 Geo. 2. cap. 41, sect. 20) security vacated: viz.

	The Drawback.
ALAMODES and LUSTRINGS (8 and 9 Will. 3, cap. 36, sect. 5)	nothing
BOOKS BOUND, 9 Geo. 1, cap. 19, sect. 6	nothing
BEAVER SKINS, 8 Geo. 1, cap. 15, sect. 14.	half

BORAX,

The Drawback.

BORAX, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3.	as unrefined
CABLE-YARN, 6 Ann. cap. 19, sect. 13.	nothing
CAMPHIRE, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3.	as unrefined
CANDLES, 23 Geo. 2, cap. 21, sect. 36.	nothing
COPPER-BARS, not imported from East-India and Barbary, and not exported by British (9 and 10 Will. 3, cap. 26, sect. 19; 12 Ann. sess. 3, cap. 27, sect. 1; 26 Geo. 2, cap. 32, sect. 2.)	nothing
CORDAGE, 6 Ann. cap. 19, sect. 13.	nothing
HEMP, unwrought, to the British dominions in America, 4 Geo. 2, cap. 27, sect. 7	nothing
HOPS, foreign, to Ireland, 9 Ann. cap. 12, sect. 27.	nothing
IRON and STEEL, foreign, to the British plantations in America, 9 Ann. cap. 12, sect. 25.	nothing
WARES, foreign, ditto, 2 and Ann. cap. 9, sect. 12.	nothing
OISTERS, French, 10 Geo. 2, cap. 30, sect. 4.	nothing
PAPER, foreign, 10 Geo. 2; cap. 27, sect. 4.	nothing
PEPPER, 8 Ann. cap. 7, sect. 24.	nothing
PICTURES, 8 Geo. I. cap. 20, sect. 49.	nothing
SAILS, or SAILCLOTH, foreign, 4 Geo. II. cap. 27, sect. 3.	nothing
SOAP, and	nothing
STARCH, 23 Geo. II. cap. 21, sect. 36.	nothing
TEA, 18 Geo. II. cap. 26, sect. 5.	nothing
TOBACCO of the British plantations, to be consumed or used on board ships of war in any part of Europe, 6 Ann. cap. 22, sect. 13.	nothing
Ditto, in ships under 20 tons to Ireland, 8 Ann. cap. 13, sect. 20.	nothing
N. B. No Tobacco may be exported in ships under 70 tons, except to Ireland; nor from any other port than the port at which it was imported; nor, if unmanufactured, in any other than the original package of 425 pounds weight, or more. 24 Geo. II. cap. 41, sect. 4, 21, 25.	
Ditto, in all other circumstances of regular exportation, 9 Geo. I. cap. 21, sect. 6; 24 Geo. II. cap. 41, sect. 4, 21, 25.	all
TOBACCO-STALKS, separated from the rest of the leaf, and exported by themselves, 9 Geo. I. cap. 21, sect. 20.	nothing
WINE-LEES, which pay duty as Wine, 1 Geo. II. cap. 17, sect. 4.	nothing
ALL GOODS to the Isle of Man, 12 Geo. I. cap. 28, sect. 21.	nothing
ALL OTHER GOODS to all other places, 9 and 10 Will. III. cap. 23, sect. 5, 8, 13	all

Number 3. One-Third Subsidy.

See page 409, 410.

THIS branch, (2 and 3 Ann. cap. 9, sect. 1, 2, 7, 11; 11 Geo. I. cap. 7, sect. 3, 7; first rule of the Additional Book of Rates, p 432; 8th and 17 rules of the former Book of Rates; 12 Ann. sess. 2, cap. 8, sect. 1, 2, 3; 9 Geo. I. cap. 21, sect. 3; 6 Geo. I. cap. 12, sect. 2; 5 Geo. I. cap. 7, sect. 1.) as well as the former subsidies, is composed of a tonnage and poundage, being an additional subsidy of one-third part of the new subsidy, payable in all cases where that is due; and is to be raised, levied, collected, secured and paid, by the same ways, means and methods, under such penalties and forfeitures, and subject to such rules and directions, as before directed for the New Subsidy.

The duty.

Therefore it is to be computed, by taking } $\overbrace{\text{One-third part of the net New Subsidy of tonnage and poundage.}}$

On due exportation within the times limited by law, drawback or repayment of this duty, must be allowed, or security vacated, as for the New Subsidy. 2 and 3 Ann. cap. 9, sect. 2, 9.

Number 4. Two-thirds Subsidy.

See page 410, 411.

IT is an additional subsidy of two third parts of the new subsidy upon all goods liable to the said new subsidy, except these following, which are exempted from this duty: viz.

TOBACCO, 3 and 4 Ann. cap. 5, sect. 1.

CURRENTS, in British-built shipping, legally navigated, *ibid.*

SUGAR from the British plantations, *ibid.*

GOODS exempted from the new and one-third subsidies, *ibid.*

CURRENTS, in ships belonging to the republic of Venice, 4 Ann. cap. 6, sect. 3; 8 Ann. cap. 13, sect. 21.

EUROPEAN LINENS, 6 Ann. cap. 22, sect. 10; 7 Ann. cap. 7, sect. 23.

SISTERS THREAD, *ibid.*

TAPES, or INCLE, *ibid.*

The

The duty.

Therefore it is to be computed by taking }
double the one-third subsidy for all }
goods liable thereto, unless these before }
exempted, or }
Two-third parts of the
net New Subsidy of
tonnage and pound-
age.

Upon due exportation within the time limited by law, draw-
back, or repayment of this duty, must be allowed as for the new
and one-third subsidies. 3 and 4 Ann. cap. 5, sect. 2.

Number 5. Subsidy, 1747.

BY 21 Geo. II. cap. 2, sect. 1, was granted from the 1st of
March, 1747, without limitation.

This branch is, over and above all subsidies, additional duties,
impositions, &c. a Poundage of twelve pence in the pound, to be
paid in ready money on all goods and merchandize imported before
landing (except for Tobacco, whereon it may be secured by bond)
according to the several particular rates or values thereof, as they
are respectively rated and valued in the Book of Rates referred to
by the 12th of Car. II. and the 11th of Geo. I. or by any other
act of parliament; or which do now pay any duty ad valorem. 21
Geo. II. cap. 2, sect. 1.

Goods from East-India not rated, are to pay this subsidy on the
gross price, for which they are sold by the candle, without any
allowance or deduction. 21 Geo. II. cap. 2, sect. 1.

Not to extend to goods, which by any law are now allowed to
be imported free of duty, nor to prohibited goods imported by the
united East-Indian company. 21 Geo. II. cap. 2, sect. 3.

On which rates, values and prices, this subsidy is, by 8 and 9
Will. III. cap. 34, sect. 2, 3; and 21 Geo. II. cap. 2, sect. 1,
to be taken in the following manner:

DRUGS, except dying-drugs, rated by the Book of Rates of 12 Car. II. as specified in the first column of rates, imported from places not of their growth, or in ship- ing not British built,	5 percent. on treble the rate,	being, for every 20s. thereof,	£. s. d. 0 1 0
ALL OTHER GOODS liable to this duty,	5 percent. on their respective rates, val. or prices,		

This duty is to be levied and collected by the same ways and
means, and under such penalties, &c. as are directed for the Old
Subsidy. 21 Geo. II, cap. 2, sect. 2.

For

For the payment of this duty on Tobacco, the importer may be allowed eighteen months time, to commence at the end of thirty days after the master's report of the ship, or from the entry of the goods within those thirty days, which shall first happen, upon his giving sufficient security for the same.

Out of this duty are to be allowed the following discounts :

	Discount.
TOBACCO of the British plantations, by 12 Ann. sess. 2. c. 8. sect. 5 ; 9 Geo. I. c. 21. sect. 3 ; 21 Geo. II. cap. 2. sect. 41 ; and 24 Geo. II. cap. 41. sect. 29, 31, 32 ; if paid down	} 25 per cent.
Ditto, if secured	
TOBACCO, not of the British plantations, by 12 Ann. sess. 2. cap. 8. sect. 1 ; 21 Geo. II. cap. 2. sect. 4 ; if paid down	} 15 per cent.
All other Goods	
	5 and 8 per cent.
	no discount.

On due exportation within three years from the time of importation, drawback, or repayment of this duty is to be allowed, (21 Geo. II. cap. 2. sect. 5.) or the security vacated, as follows :

	Drawback.
ALAMODES and Lustrings, 8 and 9 Will. III. cap. 36. sect. 5.	} nothing
BOOKS BOUND, 9 Geo. I. cap. 19, sect. 6.	
BORAX, refined in Great-Britain, 17 Geo. II. cap. 31. sect. 3.	} as unrefined
CABLE-YARN, 6 Ann. cap. 19. sect. 13.	
CAMPHIRE, refined in Great-Britain, 17 Geo. II. cap. 31. sect. 3.	} as unrefined
CANDLES, 23 Geo. II. cap. 21. sect. 36.	
COPPER BARS, not imported from East India or Barbary, and not exported by British, 9 and 10 Will. III. cap. 26. sect. 19. 12 Ann. sess. 3. cap. 18. sect. 4, 5 ; 13 Geo. I. cap. 27. sect. 1 ; 26 Geo. II. cap. 32. sect. 2.	} nothing
CORDAGE, 6 Ann. cap. 19. sect. 13.	
HEMP, unwrought, to the British dominions in America, 4 Geo. II. cap. 27. sect. 7.	} nothing
HOPS, foreign, to Ireland, 9 Ann. cap. 12. sect. 27.	
IRON and STEEL, foreign, 9 Ann. cap. 6. sect. 55. to the British plantations in America	} [nothing
—wares, foreign, (2 and 3 Ann. cap. 9. sect. 12.) to the British plantations in America	
OYSTERS, French, 10 Geo. II. cap. 30. sect. 4.	nothing
PAPER, foreign, 10 Geo. II. cap. 27. sect. 4.	nothing
PEPPER, 8 Ann. cap. 7. sect. 24.	nothing
PICTURES, 8 Geo. I. cap. 20. sect. 49.	nothing

DRAWBACK.	
PRIZE GOODS, taken by his majesty's ships or vessels } of war, 21 Geo. II. cap. 2. sect. 8.	nothing
SAILS, or Sail-cloth, 4 Geo. II. c. 27. sect. 3.	nothing
SOPE, 23 Geo. II. cap. 21. sect. 36.	nothing
STARCH, 23 Geo. II. cap. 21. sect. 36.	nothing
TEA, 18 Geo. II. cap. 26. sect. 5.	nothing
TOBACCO of the British plantations, to be con- } sumed, or used, on board ships of war in any part } of Europe, 6 Ann. cap. 22. sect. 13.	nothing
Ditto, in ships under 20 tons to Ireland, 8 Ann. } cap. 13. sect. 20.	nothing
N. B. No Tobacco may be exported in ships under 70 tons, except to Ireland; nor from any port other than the port at which it was imported; nor, if unmanufactur'd, in any other than the original package of 425 pounds each, or more, 24 Geo. II. cap. 41. sect. 4, 21, 25.	
In all other circumstances of regular exportation, } 9 Geo. I. cap. 21. sect. 6. 24 Geo. II. cap. 41. } sect. 4, 21, 25.	all
TOBACCO STALKS, separated from the rest of the } leaf, and exported by themselves, 9 Geo. I. cap. } 21. sect. 20.	nothing
All goods to the Isle of Man, 12 Geo. I. cap. 28. } sect. 21.	nothing
All other goods to all other places, 21 Geo. II. } cap. 21. sect. 6.	all

No. VI. Subsidies on Spirits.

BY 9 Geo. II. cap. 23. sect. 17. all the duties arising by Spirits, from 29 Sept. 1736, are united to, and made part of, the Aggregate Fund; and from that time the several duties then payable on spirits imported (except coinage, which see, No. 16) are accounted for in one sum, under the title of Subsidies on Spirits.

The method of computation for this branch is as follows.

EXAMPLE I.

One ton of brandy, not of France, Spain, Portugal, or Italy, imported by British in a British ship.

		Duty.	
Five per cent. on the rate		1	0 0
Discount		0	1 0
Draw-back.			
0 9 6	Half the Old Sub.	before 29 Sept. 1736	Old Subsidy N ^o I. 0 19 0
0 19 0	New Subsidy		New Subsidy 2. 0 19 0
0 6 4	One third Sub.		One third Sub. 3. 0 6 4
0 12 8	Two thirds Sub.		Two third Sub. 4. 0 12 8
<hr/>		<hr/>	
2 7 6	Now Subsidies on Spirits	2 17 9	

EXAMPLE II.

Ten gallons of cordial water of France, imported by an Alien.

				Five per cent. on the rate		Duy.					
				Discount		0	5				
						0	0				
						3					
<hr/>											
Drawback.											
0	2	4½	Half the Old Sub.	} before 29 Sept. 1736	{	Old Subsidy N ^o I.		0	4	9	
0	0	0				Petty Custom II.		0	1	3	
0	4	9	New Subsidy			New Subsidy		2.	0	4	9
0	1	7	One third Sub.			One third Sub.		3.	0	1	7
0	3	2	Two thirds Sub.			Two thirds Sub.		4.	0	3	2
0	0	0				French duty		15.	1	5	
<hr/>											
0	11	10½									
				Now Subsidies on Spirits.		<hr/>					
								2		0	
										6	

No. VII. Impost on Wines and Vinegar.

BY 1 Jac. 2. cap. 3. sect. 2. was granted from 24 June, 1685, to 24 June, 1693.

It was afterwards continued by several acts, and by 9 Ann. cap. 21. sect. 1. made perpetual.

This branch (1 Jac. II. cap. 3. sect. 2, 8.) is to be levied by the same ways and means, and under the same penalties, as the customs, &c. upon the importation of the following goods, viz.

The Gross Impost on		per ton	
		£.	s. d.
ALL VINEGAR	}	8	0 0
FRENCH WINES		12	0 0
ALL OTHER WINES		12	0 0

To be paid down in ready money upon entry, either by the merchant, or by the person enjoying the benefit of the prizage, or else the importer to become bound with two or more sufficient sureties, or procure three other persons to become bound for payment thereof, at three several and equal payments, each at three months distance. (1 Jac. II. cap. 3. sect. 3, 6.)

But out of the aforesaid gross duties, there must be deducted the following allowances, according to the nature and circumstances of the entry, viz.

		Discount.
1. For leakage, as out of the Old Subsidy (8th rule of the book of rates, p. 374. 1 Jac. II. cap. 3. sect. 6.)	}	12 per cent.
2. For		

Discount.

2. For prompt payment, if the duty be paid down in ready money, 10 per cent. per annum, (1 Jac. II. cap. 3. sect. 4.) which for the three three months is } 5 per cent.
3. For any defect or damage which may happen by keeping, or by any other accident; provided oath be made by the importer (not being a vintner or retailer, who is to pay the full duty) that the said liquors are imported by way of merchandize, and with intent to sell again (1 Jac. II. cap. 3. sect. 6.) } 8 per cent.
4. Out of the gross duty of all wines imported in casks, according to the respective sorts thereof, as out of the Old Subsidy, (6 Geo. I. cap. 12. sect. 2.) } 2, 6, or 10 per cent.

So that, according to the particular circumstances, the net impost to be paid or secured, will be as follows.

NET IMPOST per Ton on

			£.	s.	d.	$\frac{1}{16}$
French wines in casks, for sale	paid	filled	6	10	2	17
		unfilled	5	13	5	10
	secured	filled	6	17	7	4
		unfilled	5	19	11	4
———For private use, or for	prizage, paid	filled	7	2	4	16
		unfilled	6	4	1	18
———For prizage	secured	filled	7	10	4	16
		unfilled	6	11	2	8
———By retailers			7	10	4	16
German, Rhenish, or Hungary wines in casks, for sale	paid	filled	10	4	11	10
		unfilled	8	19	9	9
	secured	filled	10	16	0	—
		unfilled	9	9	6	—
———For private use, or for	prizage, paid	filled	11	3	2	8
		unfilled	9	15	10	1
———For prizage	secured	filled	11	15	2	8
		unfilled	10	6	4	16
———By retailers			11	15	2	8
Levant and all other wines in casks, for sale	paid	filled	9	5	9	2
		unfilled	8	0	7	1
	secured	filled	9	16	9	12
		unfilled	8	10	3	12
———For private use, or for	prizage paid	filled	10	4	0	—
		unfilled	8	16	7	13
———For prizage	secured	filled	10	16	0	—
		unfilled	9	7	2	8
———By retailers			10	16	0	—

N n

Levant

Levant wines In flasks or bottles	{ paid	filled	£.	s.	d.	$\frac{1}{20}$
for sale	{ secured	filled	10	9	9	2
——— For private use, or prizage	paid	filled	11	0	9	12
——— For prizage	secured	filled	11	8	0	—
——— By retailers			12	0	0	—
			12	0	0	—
Vinegar, for sale	{ paid	{ filled	6	19	10	1
		{ unfilled	6	3	0	15
	{ secured	{ filled	7	7	2	8
		{ unfilled	6	9	6	9
——— For private use		{ filled	7	12	0	—
——— By retailers		{ unfilled	6	13	9	3
			8	0	0	—

Which net imposts are computed after the method of the following examples.

Two casks, containing one ton of Spanish Wine.

Filled.				Unfilled.			
£.	s.	d.	$\frac{1}{20}$	£.	s.	d.	$\frac{1}{20}$
12	0	0		12	0	0	
1	4	0		1	4	0	
The gross impost per ton 10 per cent.							
10	16	0		10	16	0	
By vintner or retailer							
12	0	0		12	0	0	
0	0	0		1	8	9	12
Gross duty 12 per cent. for leakage							
12	0	0		10	11	2	8
0	12	0		0	10	6	15
5 per cent for prompt payment							
11	8	0		10	0	7	13
1	4	0		1	4	0	
10 per cent. of the gross duty							
10	4	0		8	16	7	13
For private use							
12	0	0		10	11	2	8
0	19	2	8	0	16	10	16
Less 12 per cent. as before 8 per cent. for waste							
11	0	9	12	9	14	3	12
0	11	0	10	0	9	8	11
5 per cent. for prompt payment							
10	9	9	2	9	4	7	1
1	4	0		1	4	0	
10 per cent. of the gross duty							
9	5	9	2	8	0	7	1
For sale, paid							

Filled,

Customs.

491

Filled.					Unfilled.			
£.	s.	d.	$\frac{1}{20}$		£.	s.	d.	$\frac{1}{20}$
11	0	9	12	Lefs 12 and 8 per cent. as above	9	14	3	1
1	4	0		10 per cent of the gross duty	1	4	0	
<hr/>					<hr/>			
9	16	9	12	For sale, bonded	8	10	3	12

Three casks, containing one ton of vinegar.

Filled.					Unfilled.			
£.	s.	d.	$\frac{1}{20}$		£.	s.	d.	$\frac{1}{20}$
8	0	0		Gross duty by vintner or retailer	8	0	0	
0	0	0		12 per cent. for leakage	0	19	2	8
<hr/>					<hr/>			
8	0	0			7	0	9	12
0	8	0		5 per cent. for prompt payment	0	7	0	9
<hr/>					<hr/>			
7	12	0		For private use	6	13	9	3
<hr/>					<hr/>			
8	0	0		Lefs 12 per cent. as before	7	0	9	12
0	12	9	12	8 per cent. for waste	0	11	3	3
<hr/>					<hr/>			
7	7	2	8	For sale, bonded	6	9	6	9
<hr/>					<hr/>			
0	7	4	7	5 per cent. for prompt payment	0	6	5	14
<hr/>					<hr/>			
6	19	10	1	For sale, paid	6	3	0	15

And so for all other various cases of entry.

Upon due exportation (6 Geo. I. cap. 12. sect. 6. 7 Geo. I. cap. 21. sect. 10.) within the times limited by law, drawback or repayment of this duty must be allowed, as follows.

WINE, (6 Geo. I. cap. 12. sect. 6.)	two thirds
VINEGAR, (1 Jac. II. cap. 3. sect. 7.)	} nothing
WINE-LEES, which pay duty as wine, (1 Geo. II. cap. 17. sect. 4.)	

No. VIII. Impost on Tobacco.

BY 1 Jac. II. cap. 4. sect. 1. was granted from 24 June, 1685, to 24 June, 1693.

It was afterwards continued by several acts, and by 9 Ann. c. 21. sect. 1. made perpetual.

It is to be raised, levied, collected, and secured, in the same manner and form, and by such rules, means, and ways, and under such penalties and forfeitures, as directed for the customs. (1 Jac. II. cap. 4. sect. 1. 7 and 8 Will. III. cap. 10. sect. 3, 6.)

Upon the importation of all tobacco, as follows, viz.

Gross impost per pound weight on		£.	s.	d.
TOBACCO of the British plantations in America		0	0	3
SPANISH or Foreign Tobacco, not of the British plantations		0	0	6

For the payment thereof, the importer may be allowed eighteen months, to commence from the end of thirty days from the master's report of the ship, or from the entry of the goods within those thirty days, which shall first happen, upon his giving sufficient security for the same. 7 and 8 Will. III. cap. 10. sect. 5. 12 Ann. sess. 2. cap. 8. sect. 2; 5 Geo. I. cap. 7. sect. 1; 9 Geo. I. cap. 21. sect. 3.

But Tobacco of the British plantations may be deposited in warehouses provided at the charge of the importer and approved by the commissioners of the customs, on security given by the importer's own bond to pay the duties at the end of fifteen months. 12 Ann. cap. 8. sect. 5; 5 Geo. I. cap. 7. sect. 1; 24 Geo. II. c. 41. sect. 31.

Out of the aforesaid gross duty, there is to be allowed the following discounts: viz.

	Discount.
TOBACCO of the British plantations, (7 and 8 Will. III. cap. 10. sect. 5; 12 Ann. sess. 2. cap. 8. sect. 1, 3; 5 Geo. I. cap. 7. sect. 1; 9 Geo. I. cap. 21. sect. 3.) being under the same regulations as the additional duty thereon; if paid down	25 per cent.
—if secured	15 per cent.
—of the British plantations, whether paid or secured, 7 and 8 Will. III. cap. 10. sect. 5; 12 Ann. sess. 2. cap. 8. sect. 1. 5 Geo. I. cap. 7. sect. 1	8 per cent. which is not to be deducted on exportation.

And besides,

if (7 and 8 Will. III. cap. 10. sect. 5; 12 Ann. sess. 2. cap. 8. sect. 3; 5 Geo. I. cap. 7. sect. 1.) the duty be paid down on entry within 30 days from the report, or at any time within any of the first fifteen of the eighteen months, to commence at the end of thirty days from the report, a farther allowance, for the whole fifteen, or so many entire months as shall remain unexpired,	10 per cent. per annum. But no allowance after the end of fifteen months, nor for less than one month.
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For the method of computation, take the following examples:

1200 lb. of British plantation tobacco.

15	0	0	The Gross Impost, at 3 d. per pound weight	15	0	0
3	15	0	25 per cent. discount.	15	per cent	0 15 0
11	5	0	To be paid, net impost,	to be secured	12	15 0

1500 pounds weight of Spanish Tobacco.

Gross impost, at 6 d. per pound weight
Discount of 8 per cent.

£.	s.	d.
37	10	0
3	0	0

Net impost to be secured

34	10	0
----	----	---

Discount at 10 per cent. per annum, being 12l. }
10s. per cent. for 15 months }

4	6	3
---	---	---

Net impost to be paid down at entry

30	3	9
----	---	---

Upon due exportation within the times limited by law, drawback or re-payment (7 Geo. I. cap. 21. sect. 10.) of this duty is to be allowed, or (12 Ann. sess. 2. cap. 8. sect. 2. 9 Geo. I. cap. 21. sect. 3, 6. 24 Geo. II. cap. 41. sect. 29.) the security vacated : as follows :

Drawback.

TOBACCO of the British plantations, to be consumed or used on board ships of war in any part of Europe, 6 Ann. cap. 22, sect. 13. }

nothing

Ditto, in ships under 20 tons to Ireland, 8 Ann. cap. 13, sect. 20. }

nothing

Ditto, to the Isle of Man, 12 Geo. I. cap. 28. sect. 21.

nothing

N. B. No Tobacco may be exported in ships under 70 tons, except to Ireland ; nor from any other port than the port at which it was imported ; nor, if unmanufactured, in any other than the original package of 425 pounds weight, or more. 24 Geo. II. cap. 41, sect. 4, 21, 25.

Ditto, in all other circumstances of regular exportation, 9 Geo. I. cap. 21, sect. 6 ; 24 Geo. II. cap. 41, sect. 4, 21, 25. }

all

TOBACCO-STALKS, separated from the rest of the leaf, and exported by themselves, 9 Geo. I. cap. 21, sect. 20. }

nothing

OTHER TOBACCO, to the Isle of Man, 12 Geo. I. cap. 28. sect. 21. }

nothing

Ditto, to all other places, 7 and 8 Will. III. cap. 10. sect. 5. }

all

Number 9. Impost, 1690.

BY 2 Will. and Mar. sess. 2. cap. 4. sect. 3. was granted from December 25, 1690, to 10 November, 1695.

It was afterwards continued by several acts ; and, by 9 Ann. cap. 21, sect. 1. made perpetual. See page 390, to the end of page 394.

But,

But, by the 24th of Geo. II. cap. 46. this, and all other duties then payable on all raw Linen-yarn imported, were taken off, and Branch, number 36, laid on in lieu.

And so in proportion for any greater or lesser quantities; observing, that (2 Will. and Mar. sess. 2. cap. 4. sect. 53; 2 and 3 Ann. cap. 9. sect. 7; 11 Geo. I. cap. 7. sect. 3, 7; first rule of Additional Book of Rates) where this duty is to be levied according to the rate or value, the meaning is, according to the respective rates of the goods in the first and second columns of rates; or, if not there rated, according to their value and price upon oath, &c. as for the old subsidy of poundage, &c. and that this duty is not to be reckoned into the said value.

Which said impost duty must be paid and secured in the manner following: viz.

PEPPER (2 Will. and Mar. sess. 2. cap. 4. sect. 11.) to be paid down at entry } 1 3d part.
Ditto, to be secured by bond, payable at 12 months } 2 3d parts.

But, by 8 Ann. cap. 7. sect. 20. Pepper must be warehoused at importation, upon paying down half the old subsidy. 2 Will. and Mar. sess. 2. cap. 4. sect. 54.

All other goods, to be paid at four equal and quarterly payments, upon the importer's giving security accordingly.

But if the importer chuses to pay down the duty at entry, he is to be allowed Discount after the rate of 10 per cent. per annum; which being equated to the sum of the duty in respect of Pepper, and to the times of payment in respect of all other goods, reduces it as follows:

	Discount.
For Pepper	6 and 2 3ds per cent.
For all other goods	6 and 1 4th per cent.

For the method of computation of this duty, take the following examples.

100 pounds weight of Italian wrought Silk, imported from Italy in a British ship.

	£.	s.	d.
Upon recourse to the head of Silk, in chapter the second, this sort will be found to be rated at 1l. 13 s. 4 d. per pound; at which rate the quantity proposed amounts to	166	13	0

The gross impost to be secured, being 10 per cent. or 2s. for every 20s. of the said rate, amounts to	16	13	4
---	----	----	---

Discount, at 6l. 5 s. per cent. to be deducted for prompt-payment, amounts to	1	0	10
---	---	---	----

The net impost to be paid down at entry amounts to	15	12	6
--	----	----	---

Three hundred weight of Ginger of the British plantations, imported directly, and in British-built shipping.

The practical method of computing the impost therereon, is thus:

	L.	s.	d.	$\frac{1}{20}$
The amount, at one-third part of the rate of 1 s. 4 d. per pound	7	9	4	—
The gross impost thereon, being 10 per cent. or 2 s. in the pound on the said rate, is	0	14	11	4
Discount, at 6 l. 5 s. per cent. to be deducted for prompt-payment, is	0	0	11	4
Net impost to be paid	0	14	0	

2400 pounds weight of Pepper imported directly from the place of its growth in British-built shipping.

	£.	s.	d.
The gross impost at a halfpenny per pound, amounts to	5	0	0
Discount, at 6 l. 13 s. 4 d. per cent. to be deducted for prompt-payment, amounts to	0	6	8
The net impost to be paid, amounts to	4	13	4

And after the method of these examples, may the impost of all other species of goods be computed.

Upon due exportation within the times limited by law, drawback (7 Geo. 1. cap. 21, sect. 10) or repayment of this duty must be allowed, or the (2 Will. and Mar. sess. 2. cap. 4. sect. 54.) security vacated: viz.

	The Drawback.
ALAMODES and LUSTRINGS (8 and 9 Will. 3, cap. 36, sect. 5)	nothing
BORAX, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3.	as unrefined
CABLE-YARN, 6 Ann. cap. 19, sect. 13.	nothing
CAMPHIRE, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3.	as unrefined
CANDLES, 23 Geo. 2, cap. 21, sect. 36.	nothing
CORDAGE, 6 Ann. cap. 19, sect. 13.	nothing
HOPS, foreign, to Ireland, 9 Ann. cap. 12, sect. 27.	nothing
IRON and STEEL, foreign, to the British plantations in America, 9 Ann. cap. 6. sect. 55.	nothing
WARES, foreign, to ditto, 2 and 3 Ann. cap. 9, sect. 12.	nothing

PAPER,

PAPER, foreign, 10 Geo. 2, cap. 27, sect. 4.	The Drawback.
PEPPER, 8 Ann. cap. 7, sect. 24.	nothing
SAILS, or SAILCLOTH, foreign, 4 Geo. II. cap. 27, sect. 3.	nothing
STARCH, 23 Geo. II. cap. 21, sect. 36.	nothing
ALL GOODS to the Isle of Man, 12 Geo. I. cap. 28, sect. 21.	nothing
ALL OTHER GOODS to all other places, 2 Will. and Mar. sess. 2, cap. 4, sect. 54.	all

Number 10. Impost 1692.

BY 4 and 5 Will. and Mar. cap. 5. sect. 2. was granted from March 1, 1692, to March 1, 1696. 4 and 5 Will. and Mar. c. 5. sect. 1, 2, 4; 2 and 3 Ann. cap. 9. sect. 7; 11 Geo. I. cap. 7. sect. 3, 7; first rule of Additional Book of Rates.

It was afterwards continued by several acts; and, by 9 Ann. cap. 21. sect. 1. made perpetual.

This branch is over and above all other duties and impositions, to be paid upon the importation of the goods, and in the proportion and manner mentioned in page 396 to 400; and to be raised, levied, and collected, in the same manner and form, and by such rules, means, and ways, and under such penalties and forfeitures, as directed for the customs, &c. 4 and 5 Will. and Mar. cap. 5. sect. 1, 2, 4; 2 and 3 Ann. cap. 9. sect. 7; 11 Geo. I. cap. 7. sect. 3, 7; first rule of Additional Book of Rates.

Which said additional impost duty may be paid at four equal and quarterly payments, upon the importer's giving security for the same; but if he chuses to pay down the duty at entry, he is to be allowed discount, after the rate of 10 l. per cent. per annum; which being equated to the times of payment, reduces it to 6 l. 5 s. per cent. 4 and 5 Will. and Mar. cap. 5. sect. 6.

And upon the importation of French wines in casks, there is also to be a farther allowance of 6 l. per cent. out of the gross duty. 6 Geo. I. cap. 12. sect. 2.

For the method of computation, take the following example:

Four casks, containing one ton of French wines, filled or unfilled.

	£.	s.	d.	—
The gross impost, 1692, per ton	8	0	0	—
6 per cent. of the gross duty	0	9	7	4
	<hr/>			
The net impost 1692 to be secured	7	10	4	16
	<hr/>			
The gross impost 1692 per ton	8	0	0	—
6 l. 5 s. per cent. for prompt-payment	0	10	0	—
	<hr/>			
	£.	s.	d.	

6 per cent. of the gross duty

£.	s.	d.	$\frac{1}{20}$
7	10	0	—
0	9	7	4

The net impost 1692 to be paid

7	0	4	16
---	---	---	----

So that the net impost 1692, on French Wines, in }
casks, will be, per ton, if paid,

7	0	4	16
---	---	---	----

Ditto, if secured

7	10	4	16
---	----	---	----

Upon due exportation within three years from the time of importation, drawback, or repayment (7 Geo. I. cap. 21. sect. 10.) of this duty is to be allowed, or the (4 and 5 Will. and Mar. cap. 5. sect. 6.) security vacated, as follows : viz.

ALAMODES and Lustrings, 8 and 9 Will. III. cap. }
36. sect. 5.

Drawback.

nothing

BOOKS BOUND, 9 Geo. I. cap. 19, sect. 6.

nothing

COPPER BARS, not imported from East India or }
Barbary, and not exported by British, 9 and 10 }
Will. III. cap. 36. sect. 19. 12 Ann. sect. 3. cap. }
18. sect. 4, 5 ; 13 Geo. I. cap. 27. sect. 1 ; 126 }
Geo. II. cap. 32. sect. 2.

nothing

HEMP, unwrought, to the British dominions in }
America, 4 Geo. II. cap. 27. sect. 7.

nothing

OYSTERS, French, 10 Geo. II. cap. 30. sect. 4.

nothing

PAPER, foreign, 10 Geo. II. cap. 27. sect. 4.

nothing

PICTURES, 8 Geo. I. cap. 20. sect. 49.

nothing

SAILS, or Sail-cloth, 4 Geo. II. c. 27. sect. 3.

nothing

WINE-LEES, (which pay duty as wine, 1 Geo. II. }
cap. 17. sect. 4.)

nothing

BEAVER SKINS, 8 Geo. I, cap. 15, sect. 14.

half

All goods to the Isle of Man, 12 Geo. I. cap. 28. }
sect. 21.

nothing

All other goods to all other places, 4 and 5 Will. }
and Mar. cap. 5. sect. 6.

all

Note, LAPIS CLAMINARIS exported, was, by 4 and }
5 Will. and Mar. cap, 5. sect. 2. charged with this }
duty, per ton, at

£.	s.	d.
----	----	----

1	0	0
---	---	---

But, by 7 and 8 Will. III. cap. 10. sect. 13 ; 8 and 9 }
Will. III. cap. 20. sect. 9 ; 1 Ann. cap. 13. sect. }
9. reduced to

0	2	0
---	---	---

Number 11. Duty on Whale-fins.

BY 9 and 10 Will. III. cap. 45. sect. 2. was granted from 10 July, 1698, for eight years.

It was afterwards continued by several acts, and made perpetual by 9 Ann. cap. 21. sect. 1.

This branch is, over and above all former duties and impositions, to be paid and secured at the Custom-house on the importation of all Whale-fins, but such as are particularly excepted; and to be under the management of the commissioners of the customs, who are to cause the same to be raised, levied, collected, and paid to the receiver-general of the customs, &c. 9 and 10 Will. III. cap. 45. sect. 2, 3, 9, 10.

THE GROSS DUTY.

	£.	s.	d.
WHALE-FINS, (10 and 11 Will. III. cap. 21. sect. 31; 1 Ann. cap. 16. sect. 1.) taken and imported in and by ships belonging to any of his majesty's subjects, the pound weight	0	0	3

But Whale-fins taken in the Greenland Seas, or Davis's Streights, or any parts of the seas adjoining, in British ships, or ships of the British plantations in America, legally navigated, may be imported till the 25th of December, 1764, and from thence to the end of the then next session of parliament, 10 Geo. I. cap. 16. sect. 1; 12 Geo. I. cap. 26. sect. 7: revived by 5 Geo. II. cap. 28. sect. 1; and continued by 13 Geo. II. cap. 28. sect. 4; 22 Geo. II. cap. 45. sect. 2; 28 Geo. II. cap. 20. sect. 3.

free.

WHALE-FINS, taken and imported by foreigners, or by ships not belonging to his majesty's subjects, the pound weight	0	0	6
---	---	---	---

Which said duty may be paid at four equal and quarterly payments, upon the importer's giving security for the same: but if he chuses to pay down the duty at entry, he is to be allowed discount after the rate of 10l. per cent. per annum, which being equated to the times of payment, reduces it to 6l. 5 s. per cent.

For the method of computation, take the following example:

1 C. 2 qr. 0 pounds of Whale-fins of foreign fishing.

The gross-duty, at 6d. per pound	to be secured	4	4	0
Discount, at 6l. 5 s. per cent.		0	5	3

The net duty	to be paid	3	18	9
--------------	------------	---	----	---

Upon

Upon due exportation within the time limited by law, this duty (17 Geo. I. cap. 21. sect. 10.) is wholly drawn back, or the (9 and 10 Will. III. cap. 45. sect. 5.) security vacated.

Number 12. Duty of 15 per cent. on Muslins.

BY 11 and 12 Will. III. cap. 3. sect. 1. was granted from the 25th of March, 1700, to the 29th of September, 1701.

It was afterwards continued by several acts, and by 7 Ann. cap. 7. sect. 25. made perpetual.

This branch (11 and 12 Will. III. cap. 3, sect. 1.) is, over and above all former duties, to be paid for Muslins imported; by which are to be understood the (12 and 13 Will. III. cap. 11. sect. 14.) following species: viz.

ABOWAHS

ADDATIES

APRONS

BETELLES, plain and striped

CALLICO LAWNS

CALLICOES of all other sorts, commonly called Muslins

COMERVILLES

COSSAES, plain and flowered

DOREAS

GOLCANDA

JAMDANNES

JECOLSIES

JUNAYS

MAHUMADHIATES, plain and flowered

MULMULS, plain and flowered

NECKCLOTHS

NIGHTRAILS

ORINGALL

PODAVETS

REHINGS

ROWALLEW

SALLOWS

SEERBANDS

TANJEBS, plain and flower.d

TIRINDAMS.

To be under the management of the commissioners of the customs, who are to cause the same to be raised, levied, collected, and paid to the receiver-general of the customs, &c. in the manner following: (11 and 12 Will. III. cap. 3. sect. 4.) viz.

The gross duty.

For every twenty shillings of the true and real value of the said Muslins, according to the gross price at which they shall be sold, by 11 and 12 Will. III. cap. 3. sect. 1, 3.

0 3 0
or
15 per cent.

O o 2

The

The importer, before the landing of the goods, to become bound with two or more sufficient sureties, for payment of the said duty, as soon as the goods shall be sold, and for exposing them to sale openly and fairly, by way of auction, or by inch of candle, within the city of London, within three years after the importation thereof. 11 and 12 Will. III. cap. 3. sect. 2; 7 Geo. I. cap. 21. sect. 11.

And, in case any of the said goods shall be fairly sold within the time limited, as aforesaid, and the importer shall pay down the duty of 15 per cent. within twenty days after such sale, he is to be allowed a discount thereon, after the rate of (11 and 12 W. III. cap. 3. sect. 6. } 5 percent.

Upon due exportation within the times limited by law, this duty is (7 Geo. I. cap. 21, sect. 10.) wholly drawn back, or the security vacated.

Number 13. Duty on Spices, Pictures, &c.

BY 6 and 7 Will. III. cap. 7. sect. 2. was granted from May 1, 1695, to May 2, 1698.

It was afterwards continued by several acts, and by 7 Ann. cap. 7. sect. 25, made perpetual.

This branch is, over and above all duties, to be paid upon the importation of the following goods, in ready money, without discount. 6 and 7 Will. III. cap. 7. sect. 2.

				The duty				
				£.	s.	d.		
CINNAMON	}	for every 20s. of their respective rates		0	1	0		
CLOVES								
MACE								
NUTMEGS								
PICTURES, whether for private use or for sale, for				}	0	4	0	
every 20s. of their value								

But the duties on pictures having been since otherwise regulated by 8 Geo. I. cap. 20. this branch thereon is now computed at four shillings on every twenty shillings of an imaginary or feigned rate, adapted rate, adapted to the respective circumstances of importation.

Upon due exportation, as directed for the Old Subsidy, &c. Drawback, or Repayment of this duty must be allowed, as follows: viz.

PICTURES, 8 Geo. I. cap. 20. sect. 49.	The drawback.
THE REST, 6 and 7 Will. III. cap. 7. sect 5.	
	nothing
	Two thirds.

No. 14. Additional Duty on Spices, Pictures, and
Duty on Drugs, &c.

BY 3 and 4 Ann. cap. 4. sect. 5. was granted from February 1, 1704, to June 24, 1710.

And, by 7 Ann. cap. 7. sect. 25. made perpetual.

This branch is, over and above all other former duties and impositions whatsoever, to be paid upon the importation of the following goods: (3 and 4 Ann. cap. 4. sect. 5.) viz.

CINNAMON	} for every 20 s. of their respective rates	The duty.
CLOVES		0 1 0
MACE		
NUTMEGS		
PICTURES, whether for private use, or for sale, for every 20 s. of their value	}	0 4 0

But the duties on pictures having been since otherwise regulated by 8 Geo. I. cap. 20. this branch thereon is now computed at four shillings on every twenty shillings of an imaginary or feigned rate, adapted to the respective circumstances of importation. See Pictures in the Rates Inwards.

DRUGS, viz.

	The Duty.
Rated in the Book of rates (3 and 4 Ann. cap. 4. sect. 8, 9.)—for every 20 s. of their respective rates; but regard to be had to the rule at the end of the Rates on Drugs, in favour of a direct importation, &c.	0 2 0 — or 10 per cent.
Rated in the Book of rates (3 and 4 Ann. cap. 4. sect. 8, 9.) 11 Geo. I. cap. 7. sect. 3.—for every 20 s. of such their respective rates	0 0 9 12 or 4 per cent.
Not rated in the first column of rates, in chapter the second, and imported from East-India, China, or Persia,—for every 20 s. of the true and real value thereof, according to the gross price (reduced) at which they shall be sold at the candle	0 0 9 12 or
Not at all rated, and imported from any other places (3 and 4 Ann. cap. 4. sect. 8, 9, 10; 11 Geo. I. cap. 7. sect. 7.—for every 20 s. of their values upon the oath or affirmation of the importer, as for the old subsidy	4 per cent.

PORCELAIN,

PORCELAN, commonly called China, or Japan-ware, made of earth, 2 and 3 Ann. cap. 9. sect. 6, 7; 3 and 4 Ann. cap. 4. sect. 8.—for every 20s. of the true and real value thereof, according to the gross price at which they shall be sold at the candle

The duty.

0 2 4 16
or
12 per cent.

This duty on Porcelan and unrated drugs from East-India, &c. is to be secured, ascertained, valued, raised, levied, collected, answered, and paid by such ways and means, and with such allowances, and in such manner and form, &c. as directed for the Old Subsidy on unrated East-India goods. 3 and 4 Ann. cap. 4. sect. 9.

WHITE CALLICOES, which do not pay duties as Muslins,—for every twenty shillings of the true and real value thereof, according to the gross price at which they shall be sold at the candle, 3 and 4 Ann. cap. 4. sect. 8.

The gross duty.

0 3 0
or
15 per cent.

DIMITIES, ditto

ALL OTHER MANUFACTURES MADE OF COTTON, ditto

This duty upon White Callicoes, Dimities, and other Manufactures made of Cotton, is to be secured, ascertained, valued, raised, levied, collected, answered, and paid by such ways and means, and subject to such allowances, and in such manner and form, as directed for the Fifteen per cent. Number 12. 3 and 4 Ann. cap. 4. sect. 9; 7 Geo. I. cap. 21. sect. 11.

Upon due exportation within the times limited by law, drawback or re-payment (7 Geo. I. cap. 21. sect. 10.) of this duty must be allowed, or (3 and 4 Ann. cap. 4. sect. 12.) the security vacated: as follows:

BORAX, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3. } Drawback.
as unrefined
CAMPHIRE, refined in Great-Britain, 17 Geo. 2, cap. 31, sect. 3. } as unrefined
SPICE, 3 and 4 Ann. cap. 4. sect. 7; 12 and 13 Will. III. cap. 11. sect. 10; 6 and 7 Will. III. cap. 7. sect. 5. } two-thirds.
PICTURES, 8 Geo. I. cap. 20. sect. 49. } nothing
THE REST, 3 and 4 Ann. cap. 4. sect. 12. } all.

Note, under this title was comprehended an additional duty on Coffee, Tea, Cocoa-Nuts, Chocolate, and Cocoa-paste, of as much as the former duty, Number 13; but was repealed by the same acts which repealed that duty.

Number

Number 15. Second 25 per cent. on French Goods.

BY 7 and 8 Will. III. cap. 20, sect. 3, 4, 5, 6, was granted from February 2, 1696, for 21 years, and from thence to the end of the next sessions of parliament.

By 1 Geo. I. cap. 12. sect. 3. continued for ever.

This branch is, over and above all duties and impositions, &c. to be paid upon the importation of the following goods; and to be raised, levied, collected, and paid in the same manner and form, and by such rules, means, and ways, and under such penalties and forfeitures, as directed for the Customs. 7 and 8 Will. III. cap. 20, sect. 2, 7; 11 Geo. I. cap. 7. sect. 3, 7.

The Duty, per ton, on

	£.	s.	d.
FRENCH VINEGAR	15	0	0
FRENCH WINE	25	0	0
ALL OTHER GOODS, (6 Geo. II. cap. 17. sect. 2.) except Brandy (See Branch N ^o 6.) and other spirits, of the growth, product, or manufacture of France; for every 20s. of their respective rates or values upon oath; but regard to be had to the rule at the end of the rates of Drugs, in favour of a direct importation, &c.	0	5	0

Which duty is to be paid in ready money, without any deduction; except upon French Wines imported in casks; out of which must be deducted 6l. per cent. as out of the former duties. 7 and 8 Will. III. cap. 20. sect. 2, 3, 4, 5, 6; 6 Geo. I. cap. 12. sect. 2.

	£.	s.	d.
So that this duty, net, upon French Wines, imported in casks, per ton, will be	23	10	0
Upon exportation	Not drawn back.		

Number 16. Coinage on Wine, &c.

BY 18 Car. II. cap. 5. sect. 6. 11. was granted from December, 1666, until December 20, 1671.

It was afterwards continued by several acts, and, by 1 Geo. III. cap. 16. continued for 7 years, from March 1, 1761.

By 18 Car. II. cap. 5. sect. 9. this branch is appropriated to defray the charge and expence of the Mint, and of assaying, melting down, waste and coinage of gold and silver; and to the encouragement of bringing gold and silver into the Mint, there to be coined into the current coin of the kingdom.

It

It is, over and above all other duties, to be paid on the importation of the following commodities. 18 Car. II. cap. 5. sect. 6.

Duty, per ton, on

	£.	s.	d.
WINE, except Prizage-Wine, which is exempted by practice,	}	0	10
VINEGAR			
CYDER			
BEER			

The goods subject to this duty are liable to the same penalties and forfeitures for non-payment thereof, as are appointed by the act of tonnage and poundage, and the act of frauds, for non-payment of duties by those acts imposed. 18 Car. II. cap. 5. sect. 7.

Upon due exportation within the times limited by law, drawback or repayment of this duty must be allowed, as follows.

	The Drawback.
WINE-LEES, which pay duty as Wine, 1 Geo. II. cap. 17. sect. 4.	} nothing
ALL THE REST	

all

Number 17. Coinage on Spirits.

THIS branch was granted with, and appropriated to, the same uses as, the Coinage on Wine, &c. Number 16; but, by the 9th of Geo. II. cap. 23. sect. 17. from the 29th of September, 1736, this, as well as all other duties then payable on spirits, is made part of the Aggregate Fund; and, by the 27th of Geo. II. cap. 11. sect. 3. this branch is declared to continue for, and during such term, for which any of the rates, duties, and revenues, composing the said Aggregate Fund, were granted, and payable.

It is, over and above all other duties, to be paid on the importation of the following commodities. 18 Car. II. cap. 5. sect. 6.

The Duty, per ton, on

	£.	s.	d.
BRANDY	}	1	0
STRONG WATERS			

The goods subject to this duty are liable to the same penalties and forfeitures for non payment thereof, as are appointed by the act of tonnage and poundage, and the act for frauds, for the non-payment of the duties by those acts imposed. 18 Car. II. cap. 5. sect. 7.

On exportation within the times limited by law, this duty is wholly drawn back. 18 Car. II. cap. 5. sect. 8; 7 Geo. I. cap. 21. sect. 10.

Number

Number 18. Duty on Pepper, Raisins, and Spice.

BY 8 Ann. cap. 7. sect. 14. was granted from February 6, 1709, for thirty-two years; and, by 6 Geo. I. cap. 4. sect. 1. continued for ever.

This branch is, over and above all former duties, to be paid upon the importation of the following goods; and is to be ascertained, secured, raised, levied, and recovered by such rules, ways, means, and methods, and under such penalties and forfeitures, as the other duties upon the said respective goods. 8 Ann. cap. 7. sect. 14, 16, 17, 18, 19, 29, 35.

The Gross Duty on

CINNAMON	}	As much as all their respective former duties.
CLOVES		
MACE		
NUTMEGS		
RAISINS of all sorts, the hundred weight, containing 112 pounds	}	0 5 0
PEPPER, except LONG PEPPER (8 Ann. cap. 7. sect. 15; 8 Geo. I. cap. 7. sect. 15, 16; 9 Ann. cap. 6. sect. 59.) not imported directly from the place of its growth in British-built shipping, the pound	}	0 1 6
Ditto, imported directly from the place of its growth in British-built shipping, the pound	}	0 0 3

But Pepper at importation must be warehoused, upon payment of the half-subsidy, and, if exported, is liable to no further duty; and this duty is to be paid only for what shall be delivered out of such warehouses, in order to be consumed in Great-Britain. 8 Ann. cap. 7. sect. 20, 24.

For the payment of this duty on all the aforesaid goods, except Pepper, the importer is to be allowed twelve months, upon his giving security at the Custom-house; but if he pays down the same in ready-money, he is to be allowed 10l. per cent. for prompt-payment. 8 Ann. cap. 7. sect. 25.

Upon due exportation (7 Geo. I. cap. 21. sect. 10.) within the times limited by law, drawback or repayment of this duty must be allowed, (8 Ann. cap. 7. sect. 28.) or the security vacated, viz.

	The Drawback.
PEPPER, as having paid only the half subsidy, 8 Ann. cap. 7. sect. 24.	} nothing.
ALL THE REST, 8 Ann. cap. 7. sect. 28.	} all.

Number 19. Subsidy, and One per Cent. outwards,
 with the duties on

{	Leather White woollen cloths Foreign goods used in dying	}	exported.
---	--	---	-----------

 The Subsidy Outwards.

BY 12 Car. II. cap. 4. sect. 2. was granted as part of the Subsidy of poundage, and continued therewith to August 1, 1710.

By 9 Ann. cap. 6. sect. 1. revived from March, 1710, for 32 years.

By 3 Geo. I. cap. 7. sect. 1. continued for ever.

This subsidy, as well as the subsidy inwards, is composed of a Tonnage and a Poundage, and is to be paid in ready-money before shipping off, in order for exportation.

Subject to Tonnage was all Beer exported; viz.

For every ton of Beer to be exported in shipping English built, in money	} 0 2 0
For every ton of Beer exported in any other shipping, in money	} 0 2 0

By 1 Will. and Mar. cap. 22. this duty was altered, and thereby Beer and Ale (together with Cyder and Mum) exported, were to pay 1 s. per ton.

Subject to Poundage were all other goods and merchandize, native commodities, and manufactures thereof, exported (12 Car. II. cap. 4. sect. 2.) except

FUSTIANS

GARMENTS, and WEARING APPAREL of all sorts

JEWELS, PRECIOUS STONES, and PEARLS,

HERRINGS, and other sea-fish, taken by any of his majesty's subjects, and exported in ships belonging to the subjects of the realm. 12 Car. II. cap. 4. sect. 6. And except

OLD DRAPERIES, (6 Ann. cap. 8.) and

LEATHER, (20 Car. II. cap. 5.) being subject respectively to a special duty.

This duty (of Poundage) is to be levied and collected according to the particular Rates affixed respectively in the Rates outwards; or if not there rated, (Rule at the end of Rates outwards,) according to the respective real value and prices to be ascertained by the oath or affirmation of the merchant, in the presence of the customer, collector, comptroller, and surveyor; or any two of them; from which rates, values, or prices, this subsidy is to be taken for every twenty shillings thereof

} 0 1 0

But

But for the encouragement of manufactures, this branch has been taken off many sorts of goods exported (particularly woollen) by 1 Will. and Mar. cap. 12; 3 and 4 Will. and Mar. cap. 8; 7 and 8 Will. III. cap. 39; 11 and 12 Will. III. cap. 20; 7 Ann. cap. 8.

By 22 Car. II. cap. 13. sect. 8. this duty was altered as to Horses, &c. exported, being therein regulated as follows:

	L. s. d.
For every Horse, Mare, or Gelding, exported to } parts beyond the seas in amity with his majesty	0 5 0

By 9 Ann. cap. 6. and cap. 23. this duty was altered as to Coals exported, which see at large in the Rates Outwards.

And, by 8 Geo I. cap. 15. sect. 7. the several and respective subsidies, and other duties, payable on the exportation of any goods or merchandize of the product or manufacture of Great-Britain, are to cease and determine, and be no longer due, or payable, except on these following:

ALUM
COALS
CONEY HAIR, or WOOL
COPPERAS
GLEW
HAIR of all sorts
HARES WOOL
HORSES
LAPIS CALAMINARIS
LEAD
LEAD-ORE
LEATHER TANNED
LITHARGE OF LEAD
SKINS of all sorts.
TIN
WHITE WOOLLEN CLOTH
WOOL CARDS,

Provided that due entries of the goods so exempted from duties be first made in the Custom-house at the port of exportation, in the same manner and form (expressing quantities and qualities respectively) as was before practised; and that they be shipped by the proper officers; on failure whereof, the goods are liable to the same duties as before. 8 Geo. I. cap. 15. sect. 9.

Leather, &c.

By 20 Car. II. cap. 5. sect. 2. liberty was granted to export Leather, Sheep, and Calve-skins, bought in open fair or market, on payment of the following duties.

P p 2

LEATHER

LEATHER of all sorts, Sheep-skins and Calve-skins
tanned, tawed, or dressed, the hundred weight,
containing 112 pounds } $\begin{matrix} \text{L.} & \text{s.} & \text{d.} \\ & 0 & 1 & 0 \end{matrix}$

Woollen Cloths white.

By the act of Tonnage and Poundage (12 Car. II. cap. 4. sect. 3.) was granted a subsidy on Woollen Cloths, or Old Drapery, being, by British, 3 s. 4 d. and by aliens 6 s. 8. to be paid on every short woollen cloth exported; but, by 11 and 12 Will. III. cap. 20. this duty was repealed.

And, by 6 Ann. cap. 8. sect. 1. a duty was laid on White woollen cloths exported; being,

For every piece of White Woollen Cloth, commonly
called Broad-Cloth, } $\begin{matrix} \text{L.} & \text{s.} & \text{d.} \\ & 0 & 5 & 0 \end{matrix}$

Foreign Goods used in Dying.

This duty was granted by the 8th of Geo. I. cap. 15, sect. 11, 12. being a subsidy of poundage to be paid on the exportation of the following goods used in dying, which before had been imported duty free.

AGARICK
ANNATTO
ANTIMONIUM CRUDUM
AQUA FORTIS
ARCOL
ARSENICK
BAY BERRIES
BRAZIL, or FARNAMBUCK WOOD
BRAZILETTO, or JAMAICA WOOD
COCHINEAL
CREAM OF TARTAR
FUSTICK
GALLS
GUM ARABICK, or
GUM SENEGA
INDICO of all sorts
ISINGLASS
LITMUS
LOGWOOD
MADDER of all sorts
MADDER ROOTS
NICORAGUA WOOD
ORCHAL

ORCHELIA

ORCHELIA.

POMEGRANATE PEELS

RED, or GUINEA WOOD

SAFFLORE

SAL AMMONIACK

SAL GEM

SAPAN WOOD

RED SAUNDERS

SHOEMACK

STICKLACK

TURNSOLE

VALONIA

VERDIGREASE.

It is to be raised, received, levied, and recovered, by the same ways and means, and under the same penalties and forfeitures, and with such allowance for goods lost or taken at sea, and to have the like and respective continuances as the subsidy of poundage on native commodities exported. 8 Geo. I. cap. 15. sect. 12,

This subsidy on Dying-goods, before enumerated, }
is to be paid according to their respective rates, being } 0 0 6
for every 20s. thereof. 8 Geo. I. cap. 15. sect. 11.

* One per Cent. Outwards.

By 14 Car. II. cap. 11. sect. 35. was first granted from September 29, 1662, during the king's life.

By 1 Jac. II. cap. 1. sect. 4. continued during his life.

By the several acts which continue the subsidy outwards, continued for ever.

This duty is payable in ready money, without discount, upon all goods and merchandizes liable to subsidy *, exported from any port of Great-Britain, capable of a ship or vessel of two hundred tons upon an ordinary full sea, to any part of the Mediterranean sea, beyond the port of Malaga, in any ship or vessel that hath not two decks, and doth carry less than sixteen pieces of ordnance mounted, together with two men for each gun, and other ammunition proportionable.

The duty.

It is one-fifth part of the aforesaid subsidies out- }
wards, or, for every 20s. of the respective rates } 0 0 2 8
or values of the goods } or
1 per cent.

* It is understood practically, that Foreign goods used in Dying before enumerated) are not liable to this duty of One per Cent.

Number

No. 20. Duty on Candles.

BY 8 Ann. cap. 9. sect. 1. was granted from 1 May, 1710, for five years. 9 Ann. cap. 21. sect. 7. continued for ever.

This branch is, (8 Ann. cap. 9. sect. 1, 3. 4.) over and above all former subsidies, or other duties, to be paid before landing, in ready money, without discount, upon the importation of all candles, and is to be ascertained, secured, raised, levied, recovered, and answered by such rules, ways, means, and methods, and under such penalties and forfeitures, and in such manner and form, as the other duties upon candles imported.

	The duty.
CANDLES made of wax, or usually called or sold for wax candles, notwithstanding the mixture of any other ingredients therewith, the pound	0 0 4
CANDLES made of tallow, and all other candles, the two pounds	0 0 1
Upon exportation, (23 Geo. II. cap. 21. sect 36.) not drawn back.	

No. 21. Additional Duty on Candles.

BY 9 Ann. cap. 6. sect. 11, was granted from 25 March, 1711, for 32 years; and by 3 Geo. I. cap. 7. sect. 1. continued for ever.

This branch is, over and above all other duties, to be paid in ready money, without discount, (9 Ann. cap. 6. sect. 11.) upon the importation of all candles, viz.

	The duty.
CANDLES made of wax, or usually called or sold for wax candles, notwithstanding the mixture of any other ingredient therewith, the pound	0 0 4
CANDLES made of tallow, and all other candles, the two pounds.	0 0 1
To be raised, &c. (9 Ann. cap. 6. sect. 11, 12, 17.) as directed for the former new duty, No. 20.	

No. 22. Duty on Coals imported, and on Coals, Culm, and Cinders, brought coastwise.

BY 8 Ann. cap. 4. sect. 1. was granted from 29 September, 1710, for 32 years. 5 Geo. I. cap. 19. sect. 1. continued for ever.

This

This branch is, over and above all former duties, to be paid upon the following goods, (8 Ann. cap. 4. sect. 2.) and to be under the management of the commissioners of the customs, who are to cause it to be raised, levied, collected, and paid into the Exchequer, distinct from all other branches.

Due entries of the ships and goods must be made at the Custom-house in the port of discharge, (9 and 10 Will. III. cap. 13. sect. 8. 4 Ann. cap. 6. sect. 4, 5. 8 Ann. cap. 4. sect. 3.) and the duty be answered and paid to such collector as shall be appointed by his majesty, or any four or more of the commissioners of the customs, before bulk of the ship be broken, or any of the goods unladen, measured, or weighed.

	Gross duty
COALS, except Charcoal made of wood, imported from parts beyond the seas — If such as are usually sold by weight, for every ton, containing 20 hundred weight	0 3 0
—If such as are usually sold by the chalder, or any other measure reducible to the chalder, for every chalder, containing 36 bushels, Winchester measure	0 4 6
To be paid by the importers.	
—Brought coastwise, or from port to port of Great Britain,—if such as are usually sold by weight, for every ton, containing 20 hundred weight	0 2 0
—If such as are usually sold by the chalder, &c. for every chalder, containing 36 bushels, Winchester measure	0 3 0
CULM, brought coastwise, for every chalder, containing 36 bushels Winchester measure	0 0 7
CINDERS, made of pit-coal, brought coastwise, for every chalder, containing 36 bushels Winchester measure	0 3 0
To be paid at the ports of landing, and to be charged upon the owners or masters of ships.	

But for such of the said coals, culm, or cinders, (8 Ann. cap. 4. sect. 39.) as are carried from the bridge of Sterling to the town of Dunbar, or to any part betwixt them, or from (8 Geo. I. cap. 14. sect. 14.) Ellen-Foot to Bank-End in the county of Cumberland, or from any place to any other place betwixt them, this duty is not to be taken.

For payment of the aforesaid duty, the owner is to be allowed three months time, upon his giving good and sufficient security; (9 and 10 Will. III. cap. 13. sect. 12.) but if he chuses to pay ready money, he is to be allowed 10 per cent. per annum, which for the said three months is

Discount.

2½ per cent.

If, after payment or security of this duty, (9 and 10 Will. III. cap. 13. sect. 12.) the goods shall be carried to any other place of this kingdom, it shall not be again demanded or paid.

Upon

Upon due exportation, (9 and 10 Will. III. cap. 13. sect. 12.) as directed for the old subsidy, &c. (9 Ann. cap. 6. sect. 54.) or upon due proof by oath before the collector, that they have been used in melting of copper and tin ore within the counties of Cornwall and Devon, (14 Geo. II. cap. 41. sect. 3.) or in fire-engines for draining tin or copper mines in Cornwall, this duty is to be wholly repaid, or an allowance made out of the over-sea duties.

No. 23. Additional duty on Coals imported, and on Coals, Culm, and Cinders brought coastwise.

BY 9 Ann. cap. 6. sect. 8. was granted from 8 March, 1710, for 32 years. By 3 Geo. I. cap. 7. sect. 1. continued for ever.

This branch is, over and above all former duties, (9 Ann. cap. 6. sect. 8.) to be paid for the following goods.

	Gross duty.
COALS, except Charcoal made of wood, imported from parts beyond the seas—If such as are usually sold by weight, for every ton containing twenty hundred weight	0 2 0
— If such as are usually sold by the chalder, or any other measure reducible to the chalder; for every chalder, containing 36 bushels Winchester measure	0 3 0
— Brought coastwise, or from port to port of Great Britain, if such as are usually sold by weight, for every ton, containing 20 hundred weight	0 1 4
— If such are usually sold by the chalder, &c. for every chalder, containing 36 bushels, Winchester measure	0 2 0
CULM, brought coastwise, for every chalder, containing 36 bushels Winchester measure	0 0 4
CINDERS made of pit-coal, brought coastwise, for every chalder, containing 36 bushels Winchester measure	0 2 0

But for such of the said coals, culm, and cinders, as are carried from the bridge of Sterling to the town of Dunbar, or to Redhead, (9 Ann. cap. 6. sect. 10.) or to any part betwixt them, or from (8 Geo. I. cap. 14. sect. 14.) Ellen-Foot to Bank-End in the county of Cumberland, or from any place to any other place betwixt them, this duty is not to be taken.

And (9 Ann. cap. 6. sect. 8, 9, 17.) it is to be raised, levied, collected, and recovered in such manner and form, and subject to such allowances and repayments, and under such penalties, forfeitures, disabilities, and according to such rules, methods, and directions, as directed for the former duty, No. 22.

No. 24. Duty on Coals and Culm for building Churches.

BY 6 Geo. I. cap. 4. sect. 1. made perpetual.

This duty is, (9 Ann. cap. 22. sect. 1.) over and above all other impositions and duties, to be paid on the following goods.

ALL COALS and CULM imported into the port of }
London, or the river of Thames, within the liberty }
of the said city, such as are usually sold by the } o 3 o
chalder, containing 36 bushels Winchester measure }
(9 Ann. cap. 22. sect. 1.)

—Such as are actually sold by the ton, for every }
ton, containing 20 hundred weight. } o 3 o

To be raised, levied, and collected in the same manner, method, and form, and under such penalties and forfeitures, as are expressed or referred to by any law in force, for raising or collecting any duties before due on coals or culm brought coastwise to the said port of London. (6 Ann. cap. 22. sect. 1.)

For bonds, discounts, and other regulations, see Branch No. 22.

One hundred chalder of coals are allowed annually for the use of Chelsea hospital free of this duty. (9 Ann. cap. 22. sect. 8.)

On exportation Not drawn back.

No. 25. Duty on Hops.

BY 9 Ann. cap. 12. sect. 1. was granted from 1 June, 1711, for four years; Made perpetual by 1 Geo. I. cap. 2. sect. 17.

This branch is, (9 Ann. cap. 12. sect. 1.) over and above all other duties, customs, and subsidies, to be paid down in ready money upon the importation of all hops, viz.

Hops, the pound, avoirdupoise weight The duty.
o o 3

To be ascertained, secured, raised, levied, recovered and answered by such rules, ways, means, and methods, and under such penalties and forfeitures, and in such manner and form, as the other duties on hops imported. (9 Ann. cap. 12. sect. 3, 4, 39.)

Upon exportation Not drawn back.

No. 26. Duty on Hides, Skins, &c.

BY 9 Ann. cap. 11. sect. 1. was granted from 24 June, 1711, for 32 years. By 3 Geo. I. cap. 7. sect. 1. continued for ever.

This duty is, (9 Ann. cap. 11. sect. 1, 3, 4, 5.) over and above all former duties, customs, and subsidies, to be paid in ready

dy money, without discount, upon the entry, and before the landing of the following goods imported: and (9 Ann. cap. 11. sect. 7, 9.) is to be ascertained, secured, raised, levied, recovered, and answered by such rules, ways, means, and methods, and under such penalties and forfeitures, and in such manner and form, as directed for the customs.

HIDES,	Buffalo, Elk, Loshee, or any other hides dressed in oil, the pound	0	0	4
	Russia hides, the pound	0	0	2
	All other hides, not specially charged, the two pounds	0	0	3
	Of horses, mares, and geldings, dressed in alum and salt, or meal, or otherwise tawed, the hide	0	1	0
	Of steers, cows, or any other hides, of what kind soever (except horses, mares, and geldings) dressed in alum and salt, or meal, or otherwise tawed, the hide	0	2	0
SKINS,	Calveskins. { tanned, the two pounds	0	0	3
	{ dressed in alum and salt, or otherwise tawed, the two pounds	0	0	3
	Commonly called Cordivants, the dozen	0	4	0
	Deer-skins dressed in oil or alum, or otherwise perfectly dressed, the pound	0	0	6
	Dog-skins dressed in alum or salt, or otherwise, the two pounds	0	0	1
	Goat-skins, (not usually called Cordivants) however dressed, the pound	0	0	6
	Kids-skins, dressed or undressed, or not perfectly dressed, the dozen	0	1	0
	Kids skins dressed in alum and salt, or meal, or otherwise tawed, the two pounds	0	0	3
	Lamb skins { dressed in oil, the dozen	0	1	0
	{ tanned, the dozen	0	0	9
	{ dressed, or tawed otherwise, the doz.	0	0	6
	Sheep skins { dressed in oil, the dozen	0	1	6
	{ tanned, the dozen	0	0	9
	{ dressed, or tawed otherwise, the doz.	0	0	6
	Slink { with hair on, however dressed, the pd.	0	0	1
	Calveskins, { without the hair on, however dressed, the two pounds	0	0	1
All other Hides and Skins, and pieces of Hides and Skins, tanned, tawed or dressed; and all Wares made into Manufactures of Leather, or any Manufacture whereof the most valuable part is Leather; for every 20s. of the true and real value or worth to be sold at the port of importation, to be affirmed upon the oath of the merchant or importer, without abatement for this or any former duty, 9 Ann. cap. 11. sect. 3, 8.				0 3 0 or 15 per cent

PARCH-

Customs.

515

PARCHMENT, the dozen
VELLUM, the dozen

£. s. d.
0 0 6
0 1 0

Upon due exportation, as directed for the Old Subsidy, &c. and upon sufficient security given before shipping, that the goods shall not be reloaded or brought on shore again in Great-Britain, drawback of this duty, by 9 Ann. cap. 11. sect. 39, must be allowed as follows: viz.

The drawback.

HIDES and CALVE SKINS, 9 Ann. cap. 11. sect. 40. }
SHEEP and LAMB SKINS, tanned, tawed, or dressed, } two thirds
12 Ann. cap. 9. sect. 69. }
THE REST } nothing.

Number 27. Additional Duty on Hides, Skins, &c.

BY 10 Ann. cap. 26. sect. 1, 2, 7, 32, 46, was granted from the respective commencements for thirty-two years;

3 Geo. I. cap. 7. sect. 1. continued for ever:

This branch is, over and above all former duties, customs, and subsidies, to be paid in ready money, without discount, upon importation of the following goods.

From the first of August, 1712.

The duty.

£. s. d.

HIDES,	Buffalo, Elk, Loshee, or any other Hides, dressed in oil, the pound	0	0	3
	Russia hides, the pound	0	0	1
	All other tanned hides, the pound	0	0	2
	Of Horses, Mares, and Geldings, dressed in alum and salt, or meal, or otherwise tawed, the hide	0	1	0
	All other Hides, so dressed or tawed, the hide	0	1	6
SKINS,	Calve skins, dressed in alum and salt, or meal, or otherwise tawed, the 2 pounds	0	0	3
	tanned, the pound	0	0	2
	Commonly called Cordivants, the dozen	0	4	0
	Deer skins, perfectly dressed, the pound	0	0	3
	Dogs skins, however dressed, the two pounds	0	0	1
	Goat skins of all sorts except Cordivants, however dressed, the dozen	0	4	0
	Kids skins, dressed or undressed, or not perfectly dressed, the dozen	0	0	6
	Kids skins, dressed in alum and salt, or meal, or otherwise tawed, the two pounds	0	0	3

Lamb

			£.	s.	d.
SKINS,	{ Lamb skins,	{ tanned, the dozen	0	0	9
		{ dressed in oil, the dozen	0	1	0
		{ otherwise dressed or tawed, the doz.	0	0	6
	{ Sheep skins,	{ tanned, the dozen	0	0	9
		{ dressed in oil, the dozen	0	1	6
		{ otherwise dressed or tawed, the doz.	0	0	6
	{ Slink	{ with hair on, however dressed, the pd.	0	0	1
	{ Calve skins,	{ without the hair, however dressed, } the two pounds	0	0	3

All other Hides and Skins, and Pieces of Hides and Skins, tanned, tawed or dressed; and all Wares made into manufactures of Leather; or any manufacture whereof the most valuable part is Leather; for every 20s. of the true and real value or worth, to be sold at the port of importation, to be affirmed upon the oath of the merchant, without any abatement for this or any former duty. } 0 3 0 or 15 per cent

PARCHMENT, the dozen, 10 Ann. cap. 26. sect. 3. 0 2 0
VELLUM, the dozen, ibid. 0 3 0

Which duties are to be ascertained, raised, levied, recovered and secured, by such ways, means and methods, and under such penalties and forfeitures, and in such manner and form, as directed (by 10 Ann. cap. 26. sect. 4. for the former duty) Number 26.

STARCH, the pound, avoirdupoise weight, 10 Ann. cap. 26. sect. 7. } 0 0 2

To be raised, levied, recovered, answered, and paid, by such rules, ways, means, and methods, and under such penalties and forfeitures, and with such allowances, &c. as directed, by 10 Ann. cap. 26. sect. 8, for the duty on Soap, Number 28.

From July 1, 1712, 10 Ann. cap. 26. sect. 46.

GILT WIRE, the ounce troy 0 1 0
SILVER WIRE, the ounce troy 0 0 9

To be raised, levied, recovered and paid by such rules, ways, means, and Methods, and in such manner and form, &c. as directed, by 10 Ann. cap. 26. sect. 47, for the duty on Soap, Number 28.

Upon due exportation, as directed for the old subsidy, &c. and also upon sufficient security given before shipping, that the goods shall not be relanded in Great-Britain, drawback of this duty must be allowed as follows: viz.

The

HIDES and CALVE SKINS, 10 Ann. cap. 26. sect. 4, 5, two thirds
 ALL THE REST, 10 Ann. cap. 26. sect. 4, 46; 23 } The drawback
 Geo. II. cap. 21. sect. 36. } nothing.

Number 28. Duty on Soap and Paper, &c.

BY 10 Ann. cap. 19. sect. 1, 31, 32, 65, was granted from the
 several commencements for thirty-two years.

And, by 3 Geo. I. cap. 7. sect. 1. continued for ever.

This branch is, over and above all former duties, customs, and
 subsidies, to be paid by the importer, in ready-money, without
 discount, upon the entry, and before the landing of the following
 goods imported.

From June 10, 1712, 10 Ann. cap. 19. sect. 1. the Duty on

	£. s. d.
SOAP, the pound weight	0 0 2

By the said act of the 10th of Ann. cap. 19. sect. 31, 33, after
 the 24th of June, 1712, certain duties were laid on the several
 species of Paper therein recited, being those, under mentioned,
 which have no rates prefixed to them in the Rates; and for
 such Paper as was not specified therein, this duty, payable thereon,
 was 20 per cent. according to the real and true value thereof, to
 be sold at the port of importation, upon the oath of the importer,
 without any abatement for this, or any former duty.

But, by 11 Geo. I. cap. 7. sect. 4. instead of such value on the
 oath of the importer, rates were adjusted for the payment of the
 said duty.

And moreover, by the said act of 11 Geo. I. cap. 7. sect. 5. it
 is declared, that if any new fabrick of Paper shall be imported,
 which is not particularly valued or rated in the Book of Rates, such
 Paper shall pay the several duties that are chargeable on Paper
 which is nearest above in size and goodness.

Rates by 11 Geo. I. cap. 7.

The Duty on

		£. s. d.
PAPER, VOC.	{ Atlas {	0 16 0
	{ Ordinary, the ream	0 8 0
	Bastard, or Double copy, the ream	0 2 0
	{ Blue {	0 1 2
	{ Paper for sugar-bakers, the single ream	0 2 0
	{ Royal, the ream	0 0 8
	Brown Paper, the bundle, containing 40 quires	0 1 0
	Cap, vocat. Brown cap. the ream	0 1 0

Cartridge,

		£.	s.	d.			
PAPER, vocat.	Cartridge, the ream	0	1	6			
	Chancery, double, the ream	0	2	0			
	Crown,	Genoa crown,	{ fine, the ream	0	1	6	
			{ second, the ream	0	1	0	
		German crown,	the ream	0	1	0	
				0	1	0	
	Printing crown	{	fine, the ream	0	1	0	
			2d ordinary, the ream	0	0	9	
	Demy,	{	Fine, the ream	0	4	0	
			Second, the ream	0	2	6	
			Printing, the ream	0	1	8	
				0	1	8	
	Elephant,	Genoa demy	{ Fine, the ream	0	2	0	
			{ Second, the ream	0	1	6	
		German demy,	the ream	0	1	6	
				0	1	6	
	{	Fine, the ream		0	8	0	
				0	3	3	
		Second, the ream		0	2	6	
				0	2	0	
	Fools cap,	Genoa fools	{ Fine, the ream	0	1	6	
			{ Second, the ream	0	1	0	
		German fools cap,	the ream	0	1	0	
				0	1	0	
	{	Printing	{ Fine, the ream	0	1	0	
			{ 2d ordinary, the ream	0	0	9	
		Fine, the ream		0	16	0	
				0	11	0	
	Imperial,	{	Second writing imperial, the ream	0	1	0	
	Lombard		German, the ream	0	1	0	
	Medium,	{	Fine, the ream	0	6	0	
			Genoa medium, the ream	0	2	6	
			Second writing medium, the ream	0	4	0	
	Painted paper, the ream			0	8	0	
	Post,	{	Fine large post, the ream	0	2	6	
			Small post, the ream	0	1	6	
	Pot,	{	Superfine pot, the ream	0	2	0	
			Second fine pot, the ream	0	1	6	
		Genoa pot,	{	Fine the ream	}	0	0
				{ Second, the ream			
	{	Ordinary pot,	the ream	}	0	9	
	Royal,	{	Fine, the ream	0	8	0	
			Holland royal,	{	0	3	
			Genoa royal, the ream	{	0	3	
			Ordinary royal, the ream				
			Super-royal, fine, the ream	{	0	12	
	{	Second writing	{ Royal, the ream	}	0	5	
			{ Super royal, the ream				

The ream, by 10 Ann. cap. 19. sect. 39. to contain 20 quires.
 The quire, 24 sheets.

Customs.

519

L. s. d.

MILL-BOARDS, }
PASTE-BOARDS, } the hundred weight
SCALE-BOARDS, }

0 5 0

To be ascertained, secured, raised, levied, recovered, and answered by such rules, ways, means and methods, and under such penalties and forfeitures, and in such manner and form, as the former duties on the same commodities. 10 Ann. cap. 19. sect. 3, 4, 35, 36.

From July 20, 1712.

LINENS, chequered, striped, printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn before the manufacture, in any foreign parts, (except Lawns, striped or chequered Linens, being ell white, Neckcloths striped at the ends only, Barras or Packing Canvas, and Buckrams); for every 20s. of the true and real value or worth to be sold at the port of importation, upon the oath of the importer, without any abatement for this or any former duty. 10 Ann. cap. 9. sect. 65; 12 Ann. cap. 19. sect. 1.

0 3 0
or
15 percent

To be raised, levied, and collected, in the same manner and form, and by such rules, ways, and methods, as the aforesaid duty on Paper. 10 Ann. cap. 19. sect. 66.

Upon due exportation, as directed for the old subsidy, &c. and also upon sufficient security given before shipping, that the goods shall not be relanded in Great-Britain, this duty is to be drawn back or repaid, as follows.

The drawback.

PAPER, 10 Geo. II. cap. 27. sect. 4.

SOAP, 23 Geo. II. cap. 21. sect. 36.

ALL THE REST, 10 Ann. cap. 19. sect. 56, 58, 91,

93.

} nothing.
} all.

And, moreover, for such Paper as shall be used in printing books in the Latin, Greek, Oriental, or Northern languages, in the universities of Oxford and Cambridge, or in Scotland; on a certificate in writing by the vice-chancellor of the respective universities, that oath hath been made before him by the chief manager of the press, of the kinds and quantities of paper so used, a warrant or order of the Treasury is to be made out for the repayment of this duty. 10 Ann. cap. 19. sect. 63, 64.

No.

No. 29. Additional Duty on Soap, Paper, &c.

BY 12 Ann. cap. 9. sect. 1, 2, 7, 9, was granted, from August 2, 1714, for 32 years.

And, by 6 Geo. I. cap. 4. sect. 1. continued for ever.

This branch is, over and above all former duties, customs, subsidies, and rates, to be paid by the importer in ready money, without discount, upon the entry, and before the landing of the following goods imported.

The Duty on

	£.	s.	d.
SOAP, the pound weight, 12 Ann. cap. 9. sect. 1.	0	0	1
PAPER,			
MILL-BOARDS, } by 12 Ann. cap. 9. sect. 2, 3; 11			
PASTE-BOARDS, } Geo. I. cap. 7. sect. 4; a moiety,			
SCALE-BOARDS, } or half of the Duty Number 28.			
LINENS, chequered, striped, printed, painted, stained, or dyed after the manufacture, or in the thread or yarn before the manufacture, in any foreign parts, (except Buckrams, Lawns, Canvas, Barras, and Sillesia Neckcloths), and which may be lawfully used here; for every 20s. of the true and real value or worth, to be sold at the port of importation, upon the oath of the importer, without any abatement for this or any other duty, 12 Ann. cap. 9. sect. 7.	0	3	0
		or	
		15 per cent	
STARCH, the pound weight, 12 Ann. cap. 9. sect. 9.	0	0	2

To be raised, levied, ascertained, secured, collected, answered, and paid, by such ways, means, and methods, and under such penalties and forfeitures, and with the like allowances and drawbacks, and in such manner and form respectively, as the former duties charged on the same commodities, by 12 Ann. cap. 9. sect. 12, 14, 16. and 10 Geo. II. cap. 27. sect. 4. in the Branches Number 27 and 28.

Number 30. Duty on Coals exported.

BY 12 Ann. cap. 9. sect. 11. was granted from August 2, 1714, for 32 years.

And, by 6 Geo. I. cap. 4. sect. 1. continued for ever.

This branch is, over and above the former duties, to be paid on the entry outwards, and before the shipping of coals, by 12 Ann. cap. 9. sect. 12, 14.

The

The Duty on

	£.	s.	d.
COALS, to be shipped for exportation to parts beyond the seas, except to Ireland, the Isle of Man, or the British plantations; for every chalder, Newcastle measure,—in foreign bottoms	0	5	0
Ditto,———in British bottoms	0	3	0

To be raised, levied, ascertained, secured, collected, answered and paid, by such ways, means, and methods, and in such manner and form, as the former duties on exportation, by 12 Ann. cap. 9. sect. 12, 14.

Number 31. Duty on Sailcloth.

BY 12 Ann. cap. 16. sect. 1. was granted from July 21, 1713, for seven years.

It was afterwards continued by several acts; and, by 27 Geo. II. cap. 18. sect. 6. until the 29th of September, 1760, and until the end of the then next session of parliament.

This duty is, over and above all former subsidies, duties, impositions, and payments, to be paid on the following goods. 12 Ann. cap. 16. sect. 1.

The Duty on

	£.	s.	d.
FOREIGN-MADE SAILS and SAILCLOTH, or CANVAS, usually entered as Hollands Duck, or Vitry Canvas, which shall be fit for making sails for navigating ships, and imported into Great-Britain by way of merchandize (except Canvas of the manufacture of Ireland); for every ell	0	0	1
And also (until June 24, 1758, and from thence to the end of the then next sessions of parliament, by 19 Geo. II. cap. 27. sect. 1. and 26 Geo. II. cap. 32. sect. 3.) Foreign made sail, used in, or being on board any ship belonging to his majesty's subjects (except ships from the East-Indies); for every ell	0	0	1

To be raised, collected, and recovered, by such ways, means and methods, and in such form and manner, by 12 Ann. cap. 16. sect. 1, as any subsidy for goods imported.

By 23 Geo. II. cap. 32. sect. 1, 3, was granted, from the 29th of September, 1750, during the continuance of a bounty on Irish Sail-cloth of 4d. and 2d. a yard, respectively granted by an act of parliament in Ireland of 19 Geo II. the following duty: viz.

CANVAS,

The Duty on

	£.	s.	d.
CANVAS, or SAILCLOTH, of the manufacture of Ireland, on which the several bounties abovementioned of 4 d. and 2 d. a yard respectively, have been allowed, imported into Great-Britain,—of the value of 14 d. a yard, and upwards, for every yard	0	0	4
Ditto, of the value of 10 d. a yard, and under 14 d. a yard, for every yard	0	0	2

This duty is to be levied, recovered, and paid, by such means and methods, and under such penalties and forfeitures, and applied to the same uses and purposes, as the duties now payable on the importation of foreign Sailcloth,

On exportaion,

not drawn back.

Number 32. Duty on Wrought Plate.

BY 1 Geo. I. cap. 11. sect. 4. was granted from June 1, 1720, for ever.

See Number 5. Subsidy 1747.

This branch is, over and above all former customs, subsidies, and duties, to be paid down by the importer in ready money, without discount, (by 6 Geo. I. cap. 14. sect. 4. upon the entry, and before the landing of

	The Duty.
	£. s. d.
SILVER PLATE imported, for every ounce troy	0 0 6

To be raised, levied, recovered, and paid, by such rules, ways and methods, and in such manner and form, as, by 6 Geo. I. cap. 11. sect. 5, the duties on gilt and silver wire imported, under Branch Number 27.

Upon due exportation, as directed for the old subsidy, &c. and also upon sufficient security given before shipping, that the same shall not be relanded in Great-Britain, by 6 Geo. I. cap. 11. sect. 18, this duty is to be wholly drawn back or repaid.

Number 33. Duty on Apples.

BY 8 Geo. I. cap. 20. sect. 46. was granted from March 25, 1722, for three years.

By 11 Geo. I. cap. 7. sect. 11. further continued for seven years.

And,

And, by 10 Geo. II. cap. 27. sect. 1. revived and continued without limitation.

This branch is, over and above all former customs, subsidies, and duties, to be paid down by the importers in ready money, (8 Geo. I. cap. 20. sect. 46.) without discount, upon the entry, and before the landing of

The Duty.

APPLES imported, for every bushel

0 2 0

To be raised, levied, recovered and paid, by such rules, ways, means and methods, and in such manner and form, as the other duties on Apples imported. 8 Geo. I. cap. 20. sect. 47.

Upon exportation,

not drawn back.

Number 34. Duty on Wine, 1745.

BY 18 Geo. II. cap. 9. sect. 1. was granted from March 25, 1745, without limitation.

This branch is, over and above all other subsidies, additional duties and impositions, by 18 Geo. II. cap. 9. sect. 1. to be paid in ready money, without discount, and before landing, on the importation of the following goods.

The duty.

FRENCH WINE, or FRENCH VINEGAR, for every ton 8 0 0

ALL OTHER WINES and VINEGAR, for every ton 4 0 0

To be raised, levied, collected, paid and recovered, in such manner and form, and by such ways, means, and methods, and under such penalties and forfeitures (except as to discounts and drawbacks) as mentioned in the act of 1 Jac. II. cap. 3. or in any other act for continuance of the impost on Wines and Vinegar. 18 Geo. II. cap. 9. sect. 1.

But, by 18 Geo. II. cap. 9. sect. 2. not to extend to damaged and unmerchantable Wines refused, which are to be disposed of as directed by 12 Geo. I. cap. 28.

Upon exportation,

not drawn back,

Number 35. Duty on Glass.

BY 19 Geo. II. cap. 12. sect. 1, 2. was granted from March 25, 1746, without limitation.

This branch is, over and above all other customs, subsidies, and duties, to be paid by the importer, upon entry, and before landing.

The duty.

CROWN, PLATE, and FLINT GLASS, for every pound wt. 0 0 8

GREEN GLASS, or other Glass, for every pound weight, 0 0 2

BOTTLES and FLASKS, containing the quantity of a } 0 2 0
quart each, for every dozen

Ditto,

Ditto, containing more or less than a quart, for every } dozen quarts they contain } 0 2 0

By 19 Geo. II. cap. 12. sect. 8. to be raised, levied, collected, and paid, in the same manner and form, and by such ways, rules, and means, and under such penalties and forfeitures, as the present duties upon imported manufactures of Glass are by 2 Will. and Mar. sess. 2. cap. 4.

Upon exportation

not drawn back,

Number 36. Duty on Linen Yarn.

BY 24 Geo. II. cap. 46. sect. 2. was granted from March 25, 1752, without limitation.

BY 24 Geo. II. cap. 46. sect. 5. This branch is to be paid into the Exchequer, separate from all other branches of the revenue, subject and liable to the same uses and purposes as the duties by this act repealed.

By 24 II. cap. 46. sect. 1, 2. After March 25, all duties, subsidies, and impositions, before payable on the importation of Dutch, French, Spruce, Muscovia, and all other foreign Raw Linen Yarns, and of Unwrought Inkle, Short Spinnel, and all other whitened, or bleached Yarns, are repealed, and in lieu thereof are to be paid the following duties: viz.

	The duty.
French, Dutch, Muscovia, or Spruce Raw LINEN YARNS, and all other Raw Linen-yarn, by 24 Geo. II. cap. 46. sect. 3. for every pound weight	0 0 1
WHITENED or BLEACHED LINEN-YARN, known by the name of Unwrought Inkle, or Short Spinnel, and all other Whitened or Bleached Linen-yarn; for every pound weight	0 0 3
Of the manufacture of any place not belonging to the crown of Great Britain.	

To be collected, raised, and levied, in the same manner, and with the same authorities and powers, and under the like regulations, restrictions, penalties and forfeitures, as the rates, duties, subsidies, and impositions, by this act repealed. 24 Geo. II. cap. 46. sect. 4.

On exportation

not drawn back.

But, by 29 Geo. II. cap. 15. sect. 13 and 14, during the space of fifteen years from June 24, 1756, any Raw, or Brown Linen-yarns made of Flax, namely, Dutch Yarn, French Yarn, and Spruce or Muscovy Yarn, or any other Foreign Raw or Brown Linen-yarns made of Flax, imported into this kingdom in British-built ships navigated according to law, and being regularly entered and landed

free of duty.

Number

Number 37. Duty on Gum Senega.

BY 25 Geo. II. cap. 32. sect. 32. was granted from April 10, 1752, without limitation.

To be paid by the importer before landing, upon

The Duty.

GUM SENEGA, imported by his majesty's subjects in }
British-built ships navigated according to law, from }
any port or place in Europe; for every hundred } 0 10 0
pounds weight, by 25 Geo. II. cap. 32. sect. 1, 2. }

This duty is to be raised, levied, secured, collected, answered and paid, in the same manner, and under the same powers, directions, penalties, and forfeitures, as the old subsidy. 25 Geo. II. cap. 32. sect. 3.

Upon exportation,

not drawn back.

N^o. 38. Unrated goods imported, undervalued.

GOODS paying duties ad valorem, having, after examination, and upon demand made by the customer, collector, and comptroller, been delivered up for the use and benefit of the crown, and the value sworn or affirmed to, paid to the importer, together with the duties by him paid, and an addition of 10 l, per cent. to such value; and the said goods having been fairly and publicly sold to the best advantage, the net produce or overplus (if any) after a deduction of all disbursements, must be paid into his majesty's Exchequer towards the Sinking Fund, by the title of this branch. 11 Geo. I. cap. 7. sect. 8; Fourth Rule of Additional Book of Rates, page 443.

Note, that by 29 Geo. II. cap. 15. sect. 4. British and Irish Linens, of the value of 1 s. and 6 d. per yard, entered out in order to receive the bounty of three halfpence per yard, if undervalued, are subject to the like regulations.

Number 39. Prizage and Butlerage.

THESE are ancient duties, payable to the crown of England, by prerogative, upon the importation of Wines; but are now, and generally have been, granted from the crown by gift or patent.

Prizage is a certain taking or purveyance of Wines to the king's use, out of every ship bringing in Wines belonging to the natives of England, except the merchants of London, the Cinque Ports, Southampton, and Chester, which are exempted by particular charters: to be taken upon the breaking of bulk, or unloading any part of the ship's cargo, according to the whole quantity on board, though there be not more than one ton landed. 40 Hen. III. 28 Edw. I. 6 Ed. III. 20 Rich. II.

This

This duty is either Single or Double.

Single Prifage is one ton, and is due in kind, when the quantity imported amounts to, or exceeds ten tons, but is under twenty tons: for if under ten tons, there is not any prifage due.

Double Prifage is two tons, and is due in kind when the quantity imported amounts to, or exceeds twenty tons, which is the most due out of any one ship: one ton to be taken before, and the other behind the mast, at the pleasure of the king's butler or prifage-master; who may taste the whole cargo, and chuse the best wines, and fill up the casks, or chuse those that are the fullest, and take them away, allowing only 20s. per ton for freight; but it may be compounded for at a certain price, as is the practice in London, &c. 28 Edw. I. cap. 2.

But in regard to Wines imported into Scotland; on a cause in the court of Exchequer between her majesty's attorney-general and James Gordon, merchant, it was decreed, in the year 1715, that prizage was not payable thereon.

Butlerage is a duty of two shillings on every ton of Wine imported by merchants strangers; by charta mercatoria, in lieu of prifage, to be paid within forty days after the Wines are landed. 31 Edw. I. cap. 1 and 2. 27 Edw. III. cap. 26.



But being payable on Foreign Goods imported,
Are necessarily inserted here.

Number 40. Excise on Salt imported.

And, by 7 and 8 Will. and Mar. cap. 31. sect. 1. continued for ever.

Viz. £. s. d.

For every gallon of Salt 3 d. which is, for every bushel, 0 2 0

Note, This duty of 5 s. per bushel was under the management of the commissioners of the customs from the 25th of December, 1730, to the 25th of March, 1732.

And, by the 9th and 10th of Will. III. c. 44. sect. 3. from December, 1699, a further }
duty was granted } forever.

Viz.

For every gallon of Salt 7 d. which is, for every bushel, 0 4 8

But, by 3 Geo. II. cap. 30. this last duty was repealed from and after December 25, 1730; and, by

5 Geo. II. cap. 6. sect. 1. was revived from March 25,
1732, for three years.

*It was afterwards continued by several acts, and, by
26 Geo. II. cap. 6. made perpetual.*

Total duty per bushel, formerly eight gallons, (by 1 Ann. cap. 21. sect. 6.) now 84 pounds of Salt } 0 6 8

B,

By 26 Geo. II. cap. 3. sect. 3, after payment of the orders of a loan made forth in pursuance of the act of 18 Geo. II. cap. 5. together with interest due thereon, this duty is made part of the Sinking Fund.

For the payment of this duty, the importer may be allowed six months time from the importation, upon his giving sufficient security for the same to the collector upon entry, and before landing; and if he pays it in ready money, he must be allowed a discount after the rate of 10 l. per cent. per annum, which, for the said six months, is 5 per cent. 5 and 6 Will. and Mar. cap. 7. sect. 4; 5 Ann. cap. 29, sect. 2; 3 Geo. II. cap. 20. sect. 2.

Or the salt may, upon landing, be weighed, cellared, and locked up in the presence of an officer, at the importer's charge, and under the custody of the officer and importer; and the importer may, in presence of, and by warrant under the said officer's hand and seal, take away what quantity he pleases not under a wey or forty bushels at a time), upon giving security for payment of the duty within six months after the delivery, or upon payment of the duty in ready money at the delivery; in consideration whereof he must be allowed the aforesaid discount for prompt-payment. 5 Ann. cap. 8. Art. 8. 5 Ann. cap. 29. sect. 1.

But if the whole quantity, imported in any one ship does not amount to forty bushels, it may not be cellared, but the whole duty must be paid down or secured. 5 Ann. cap. 29. sect. 3.

And if the Salt is designed for the curing of any fish for exportation, or herrings for home-consumption, it may be landed, weighed, and warehoused under the locks of the officers and the proprietor, so to remain during the several intervals of each fishing season, without payment of this duty; an entry being made of the respective quantities so lodged: but at the next fishing season, when the importer wants to take the said Salt away, he must make oath to the quantity, and that it is intended to be only so used, and give security to account for the same. 5 Geo. I. cap. 18. sect. 1. 8 Geo. I. cap. 4. sect. 1, 3, 10. 8 Geo. I. cap. 16. sect. 1, 2, 3, 6. 3 Geo. II. cap. 20. sect. 10. 8 Geo. II. cap. 12. sect. 3. 29 Geo. II. cap. 23. sect. 5.

Upon due exportation, this duty is to be wholly repaid, or the security vacated. 5 and 6 Will. and Mar. cap. 7. sect. 11. 2 and 3 Ann. cap. 14. sect. 9. 12 Geo. I. cap. 14. sect. 21.

Number 41. Excise on Liquors imported.

THIS branch, both in England and Scotland, is under the management of the commissioners of excise respectively.

It is to be paid by the importer in ready money, without discount, by entries to be made with the collector for excise at the port of importation on the following goods. 12 Car. II. cap. 23. 12 Car. II. cap. 24. 1 Jac. II. cap. 1. 2 Will. and Mar. sess. 1. cap. 3. 2 Will. and Mar. sess. 2. cap. 9. 4 and 5 Will. and Mar. cap. 3. 5 and

5 and 6 William and Mary, cap. 7, 20. 7 and 8 Will. cap. 30. 12 Will. III. cap. 11. 1 Ann. sess. 1. cap. 7. 1 Ann. sess. 2. cap. 3. 3 and 4 Ann. cap. 4. 4 Ann. cap. 6. 5 Ann. cap. 19. 6 Ann. cap. 5. 1 Geo. I. cap. 1. 1 Geo. I. cap. 12. 3 Geo. I. cap. 8. 1 Geo. II. cap. 1. 9 Geo. II. cap. 17.

Alē, Beer, and Mum, the barrel	The duty.	0	15	0
And besides, for Mum, by 1 Ann. cap. 3, and since annually continued by the Malt Act, the barrel		0	10	0
Cyder, or Perry, the ton		12	10	0
Brandy, Aqua vitæ, Strong waters, or Spirits, except of the British plantations in America, the gallon,		0	4	8
—single		0	8	8
—double		0	3	8
Rum, or Spirits, of the British plantations in America, the gallon, single		0	6	8
—double				

By 2 Will. and Mar. cap. 9. and 3 Geo. I. cap. 4. All exciseable liquors of the growth or manufacture of Guernsey, Jersey, Sark, or Alderney, and imported from thence, are rated at the like duties as are chargeable for the time being on the like liquors made in this kingdom.

If landed before due entry is made, or the duty fully satisfied and paid, and a warrant for delivery signed by the collector, or landed without presence of the officer of the excise, forfeited, or the value.

15 Car. II. cap. 2. 2 Will. and Mar. cap. 9.

But Rum and Spirits of the British sugar plantations may be warehoused, on security given to pay these duties in six months. 15 Geo. II. cap. 25.

Before landing any of the above liquors from Guernsey, &c. certificate must be produced from the governor, &c. of each place respectively, and oath made before the collector of the customs, that they are of the growth and manufacture of these islands, otherwise to be subject to the same duties as the like goods imported from other foreign parts.

2 Will. and Mar. cap. 9. 3 Geo. I. cap. 4.

On exportation not drawn back.

N^o 42. Inland Duty on Coffee, Tea, and Chocolate.

BY 10 Geo. I. cap. 10. sect. 1, 3. was granted, after June 24, 1724, in lieu of the duties before comprehended under the branches Number 13, 24, 27, hereby repealed.

Coffee and Tea having, upon entry at the Custom house and payment of the customs at importation, been put into warehouses at the importer's charge, and approved of by the commissioners of the customs, must, upon delivery thence, with intent to be consumed in Great-Britain, pay the following duty: viz.

Coffee, of the British plantations in America, by 10 Geo. I. cap. 10. sect. 4. 5 Geo. II. cap. 24. sect. 1. the pound avoirdupoise weight.	The duty.	1	6	0
Ditto, of other places, (ibid.) the like pound		0	2	0

To be paid down in ready money by the proprietor, at the next office for that division, for so much as he intends to take out of the warehouse for home-consumption; the warehouse-keeper (upon producing a warrant from the collector, testifying the receipt of the duty) to deliver the goods with a permit signed by himself, and a proper officer attending the warehouse to prevent seizure. 10 Geo. I. cap. 10. sect. 26.

But if intended for exportation, may be delivered upon sufficient security given to the commissioners of the customs accordingly. 10 Ann. cap. 26. sect. 34. 10 Geo. I. cap. 10. sect. 26, 30.

		The duty.
Tea,	{ The pound avoirdupoise weight, 18 Geo. II. cap. 26. sect. 2.	} 0 1 0
	{ And also for every 100 l. of the gross price at which it shall be sold at the public sale of the East-India company	} 25 0 0

To be paid down in ready money by the proprietor to the receiver or collector of the inland duties, before he takes it out of the warehouse, for any purpose whatsoever, except for exportation to Ireland, or his majesty's plantations in America. The warehouse-keeper (upon producing a warrant from the collector, testifying the receipt of the duty) to deliver the goods with a permit signed by himself, and a proper officer attending the warehouse, to prevent seizure. 10 Geo. I. cap. 10. sect. 5. 18 Geo. II. cap. 26. sect. 2. 21 Geo. II. cap. 14. sect. 31.

But may be delivered out for exportation to Ireland, or his majesty's plantations in America, without payment of the said duty (provided it be in the same package in which it was imported, and in no less quantity than in the entire lot in which it was sold) upon due entry being made for such exportation, and bond given, with sufficient security in double the value, that it shall be so exported, and not re-landed in any part of Great-Britain, or the islands of Guernsey, Jersey, or Man: on producing a certificate of having so done, the warehouse-keeper is to deliver the tea with a permit signed by himself, and a proper officer in the warehouse. 21 Geo. II. cap. 14. sect. 1, 2.

To ascertain the price at which teas are sold at the company's public sales, the commissioners of the inland duties may constitute, under their hands and seals, officers to attend the said sales, and take account of the names of the buyers, and the price; who are to make return thereof in writing, upon oath, to the commissioners: and to prevent mistakes may, upon request to the court of directors, inspect the company's books kept for the same purpose. From which returns this 25 per cent. is to be computed. 18 Geo. II. cap. 26. sect. 6.

	The duty.
Chocolate, made or sold in Great-Britain, the pound avoirdupoise weight	} 0 1 6

To be paid by the maker, if within the bills of mortality, within one week, and in any other part of Great-Britain, within six weeks after entry. 10 Geo. I. cap. 10. sect. 18.

To be under the management of such commissioners as his majesty or the treasury shall appoint; who are to have and exercise the like jurisdiction as the commissioners of excise on liquors, and their judgment to be final. 10 Geo. I. cap. 10. sect. 7. 42.

This duty to be levied by the powers, and under the penalties of the laws of excise on liquors; and all penalties to be sued for and recovered by the same ways and means. 10 Geo. I. cap. 10. sect. 8, 41, 45.

One moiety of the duty on coffee and tea, and all the duty on chocolate to be appropriated to the same uses, as the former duties on coffee, tea, chocolate, cocoa nuts, and cocoa paste, continued and made perpetual by the 7th of Ann. cap. 7. and comprehended under the branches Number 13, 14. 10 Geo. I. cap. 10. sect. 46.

The other moiety on coffee and tea, to be appropriated to the same uses as the duty on coffee and tea, continued and made perpetual by the 3d of Geo. I. cap. 7. and comprehended under the branch Number 27. 10 Geo. I. cap. 10. sect. 46.

By stat. 30 Geo. II. cap. 10. an additional duty of 1 s. per pound is laid on coffee, and 9 d. per pound on chocolate.



APPENDIX.

Hilary 23 Geo. 2. In Chancery.

Sir MALTHIS RYAL and others,
Assignees of WILLIAM HARVEST,
a Bankrupt,

PLAINTIFFS;

JOHN ROWLS, Executor of Jo-
NATHAN STEVENS, and others,
DEFENDANTS.

This cause had been long depending; and the lord Chancellor having called to his assistance lord chief justice *Lee*, lord chief baron *Parker*, and justice *Burnet*, they severally delivered their opinions; but as the statute of the 13 Eliz. c. 5. is frequently mentioned in the following arguments, it hath been thought proper to premise the part of that act, which relates to the present case, in order to enable the reader more perfectly to understand the force of the reasoning made use of in this very interesting and important determination.

Stat. 13 Eliz. c. 5. Intituled, *An Act against fraudulent deeds, alienations, &c.*

Fraudulent deeds made to avoid the debts of others, shall be void, and the penalties on the parties to such fraudulent assurances.

2 Bulstr. 218.

FOR the avoiding and abolishing of feigned, covinous and fraudulent teoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements, as of goods and chattels, more commonly used and practised in these days, than hath been seen
or

or heard of heretofore: which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, have been, and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevifance, between man and man, without the which no common-wealth, or civil society can be maintained or continued:

Sect. 2. Be it therefore declared, ordained and enacted by the authority of this present parliament, that all and every feoffment, gift, grant, alienation, bargain and conveyance, of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit, or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise; and all and every bond, suit, judgment and execution, at any time had, or made sithence, the beginning of the queen's majesty's reign, that now is, or at any time hereafter to be had or made; to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous or fraudulent devices and practices, as

All fraudulent conveyances made to avoid the debt or duty of others, shall be void. Rast. 207. 27 Eliz. c. 4. 2 Leon. 9, 223. 2 Roll. 493. Latch. 222. Dyer 295, 351. 3 Coke 80. 5 Co. 60. 8 Co. 171. 10 Co. 56. Co. Lit. 76. a. 1 Leon. 47, 308, Hob. 72.

is aforesaid, are, shall or might, be in any wise disturbed, hindered, delayed or defrauded,) to be clearly and utterly void, frustrate, and of no effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

The forfeiture
of the parties to
fraudulent deeds.
Co. pla. 162.
Hob. 166.
Dyer 351.
Cro. El. 645.
Cro Jac. 270.

Sect. 3. And be it further enacted by the authority aforesaid, that all and every the parties to such feigned, covinous or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, and being privy or knowing of the same, or any of them; which at any time after the 10th day of June, next coming, shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had or made *bona fide*, and upon good consideration; or shall alien or assign any lands, tenements, goods, leases, or other things before-mentioned, to him or them conveyed, as is aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons, or other profits, of or out of the same; and the whole value of the said goods and chattels; and also so much money, as are or shall be contained in such covinous and feigned bond; the one moiety whereof to be to the queen's majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid, to be recovered in any of the queen's courts of record, by action of debt, bill, plaint or

or information, wherein no essoin, protection, or wager of law, shall be admitted for the defendant or defendants; and also being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprise.

Sect. 6. Provided, that this act, or any thing therein contained, shall not extend to any estate or interest of lands, tenements, hereditaments, leases, rents, commons, profit, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured; which estate or interest, is or shall be upon good consideration and *bona fide*, lawfully conveyed or assured to any person or persons, or bodies politick or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud or collusion, as is aforesaid; any thing before mentioned to the contrary hereof notwithstanding.

Justice *Burnet*: As the question upon which your lordship does me the honour to ask my opinion, is of a very extensive consequence to trade; since the decision of it either way, may be attended with inconveniencies; and as in many respects it may be said to be wholly new, and not to have undergone any judicial determination, I shall endeavour to throw my thoughts upon this subject into as clear a light as I possibly can. For that purpose it will be necessary first of all, to state the several facts in the case before the court, so far as they relate to the present question, as they stand in the pleadings, and upon the master's report.

William Harvest, a trader within the several statutes of Bankruptcy, being indebted to *Benjamin* and *Joseph Tomkins*, in 1500 l. did by indenture

indenture dated the 2d of *June* 1732, demise to them, his house and brew-house, at *Kingston*, together with all the coppers and utensils of brewing fixed, or belonging to the brew-house, for a term of five hundred years, redeemable on payment of 1500 l. and interest. These very premises had been before mortgaged, in fee in 1725 and 1731, to *Philip Stone*, as I shall observe by and by: and the master reports, that there is due upon this mortgage to the *Tomkins's* the sum of 754 l. 3 s. 6 d.

In *October*, 1736, *William Harvest* entered into articles for a partnership with *Jonathan Stevens*, in the trade of a brewer. The utensils and stock were appraised at 14,000 l. and *William Harvest* by indenture dated the 29th *November* 1736, in consideration of 7000 l. to him in hand paid, conveyed to *Jonathan Stevens* a moiety of the utensils and stock in trade, and entered into a partnership with him for seven years, by moieties in his trade of a brewer. In consequence of which, they jointly possessed themselves of the stock and utensils, and jointly carried on the trade, till the 26th *June* 1740, when it was admitted, that *William Harvest* became a bankrupt.

In less than a month after this deed of partnership, *William Harvest*, by indenture dated the 24th *December* 1736, in consideration of 4000 l. lent him by *Jonathan Stevens*, sells and assigns to *John Potter*, in trust for his partner *Stevens*, all his moiety of the partnership utensils, stock, debts, and future profits of trade, with a clause of redemption, on payment of 4400 l. on the 28th of *December*, 1738. There is a clause to charge these premises with any other sums, which *Stevens* should in the mean time lend *Harvest*, and interest for such sums.

Sir

Sir *Thomas Reynel*, being bound in two bonds as security for *Harvest*, which he has since been obliged to pay; *William Harvest* for a recited consideration of 1000*l.* paid, does by indenture dated the 10th day of *December* 1737, assign one seventh part of his undivided moiety of the partnership's stock, utensils, debts and effects, to Sir *Thomas Reynel*, with a defeasance of even date, whereby this assignment was to be void upon *Harvest*'s indemnifying Sir *Thomas Reynel* against these bonds.

William Harvest, being indebted to *Thomas Skipp*, in upwards of 1000*l.* by deed, dated the 24th of *April* 1738, assigns to him another seventh part of his undivided moiety of the partnership's stock, utensils, debts and profits, of trade, with a defeasance of even date, to be void, on payment of the several debts therein recited with interest.

As I observed under the head of *Tomkins*'s mortgage, the house and premisses mortgaged to them, were by lease and release, of 26th and 27th of *April*, 1725, conveyed in fee, to *Philip Stone*, redeemable on payment of 1200*l.* and interest. By an indorsment dated in 1731, these premisses were charged with 800*l.* more; and the utensils fixed, or belonging to the brew-house, were sold and assigned to *Philip Stone*, as a collateral security for the 2000*l.* and interest; this mortgage was by lease and release, 26th and 27th *September* 1734, assigned by *Philip Stone* to *Edward Baugh*; and *Edward Baugh* for 300*l.* by deed, 9th *November* 1736, Re-conveys to *William Harvest*, all the utensils fixed, or belonging to the brew-house.

Afterwards, by lease and release, dated the 6th and 7th of *September* 1738, *Edward Baugh* assigns his mortgage in fee of the house and
brew-

brew-house at Kingston, to *Jonathan Stevens* and *William Harvest*, who was a party to the release, sells and assigns his moiety of the utensils of brewing, to *Jonathan Stevens*, redeemable on payment of the 2000*l.* and interest. I have stated this, because in the consideration of the mortgage to *Tomkins*, it may come to be material; since the master, having reported 2355*l.* 10*s.* 9*d.* to be due to *Jonathan Stevens* on his mortgage, it is plain, that as to the land, this mortgage must take place of that to *Tomkins*. But as to the utensils of brewing, at least those fixed to the freehold, *Tomkins* must have the preference.

The last mortgage is by *William Harvest* to his son *George Harvest*, by deed, dated the 6th of *March* 1738, whereby, in consideration of 1000*l.* owing to him, he assigns to *George Harvest*, another seventh part of his undivided moiety, of the partnership, stock, utensils, debts and future profits, redeemable on payment of the principal with interest. After every one of those mortgages or assignments, *William Harvest* continued to act as a partner in carrying on the trade in the same manner he had done before the assignments, and continued so to do home to the time of his bankruptcy.

The general question therefore arising from this state of the case is, whether these six mortgages, or any of them, will be intitled to resort to the utensils, stock in trade, debts or profits of trade, for the satisfaction of their respective debts, or whether all or any of them must come in as creditors under the commission, to receive an equal distributive share of their debts with the rest of the bankrupts creditors. And the resolution of this question will depend upon another that is more restrained, viz.

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Whether these six mortgages, or any of them, by permitting the bankrupt to continue in the *possession, order and disposition* of the goods and chattels to them conveyed, have not by the express words of 21* Jac. 1. chap. 19. † Sect. 10, 11. Entitled the commissioners to sell and dispose of the same for the benefit of all the creditors, seeking relief under the commission.

In the consideration of this question, it will be necessary to make a distinction between the several mortgages; two of them being of things in possession, as utensils fixed and belonging to the brew-house. One of these was made to a stranger before the partnership; the other of a moiety to the partner. The other four mortgages are partly of things in possession, as utensils and stock in trade, and partly of things in action, as debts and future profits of trade. Three of these four are of one seventh of the bankrupt's half in the partnership effects, and the other a mortgage of his entire half to his partner.

I shall therefore 1st. consider the case of a mortgage, or conditional sale of things in possession to a stranger; the bankrupt continuing in the possession and disposition thereof, notwithstanding such sale.

2dly. I shall examine how far an assignment of things, partly in possession, partly in action, as a share in trade, will admit the same rule.

Lastly, how far the case of a mortgage of that nature, by one partner to another, will fall under the general rule.

And though the present question must wholly receive its determination from the clauses of

* See this statute in vol. 1. page 216 par. 34 to page 224 par. 48 inclusive. † See these two sections in vol. 1. page 222, 223.

21 Jac. 1. Yet it will be necessary to consider the state of creditors in general with respect to conveyances from their debtors before that statute was made.

Previous to this, it will be proper to clear the subject of what has been said with relation to pawns; which is foreign to the point in question. It was contended that pawns, both by the English and Roman law, require a delivery, but hypothecations or mortgages do not; and therefore there could be no fraud in not altering the possession after an hypothecation, which was in the nature of a pledge without a delivery; for this was cited, as to the Roman law, Justin. inst. lib. 4. Tit. 6. sect. 7. *Pignoris appellatine eam rem proprie contineri dicimus, quæ simul etiam traditur creditori, maxime si mobilis sit. At eam, quæ sine traditione, nuda conventionione tenetur proprie hypothecæ appellatione continere dicimus.* If this passage stood alone, uncontradicted by any other of the Roman law, it might go far in proving what it was cited for; but when I have produced some passages that prove a Roman *pignus* of a moveable thing to be as valid without a delivery as with it, it must be allowed, that *Domat* and *Wood*, have rightly interpreted the passage to signify, that the true distinction between a *pignus* and *hypothecation* is, that the first can only be of moveables capable of delivery, the other of immoveables, not capable of delivery; and which therefore can only be bound by the contract. So in *Domat* l. 3. t. 1. sect. 1. par. 1. and *Wood's* imp. and civil law l. 3. ch. 2. tit. 229. and with this agrees digest, l. 50. tit. 16. *de. verb. signif.* L. *238. That a *pignus* did not require a delivery is held digest lib. 13. tit. 7. l. 1. *pignus contra dicitur non*

* The words are: *pignus appellatum a pugno; quæ res, quæ pignori dantur, manu traduntur. Unde etiam videri potest verum esse, quicquid pignus proprie rei mobilis constituit.*

sola traditione, sed etiam nuda conventione et si non traditum sit.

In another law the case is stated of a moveable successively pledged to two, and delivered to the last pawnee; where it was held that the first should be preferred to the second. Digest l. 20. tit. 4. *Qui potiores in pignore, &c.* l. 12. §. 70. *Nam in pignore placet, si prior convenerit de pignore, licet posteriori res tradatur, adhuc potio-riorem esse priorem.* And, *ibid.* tit. 1. l. 10. a case is put of a thing pawned at the same time, to two different persons, and delivered to one of them. Hence it appears, that delivery was not necessary to a Roman *pignus*; the inconvenience of which has made these nations that accepted the Roman law, to vary therefrom in that particular, *Domat*.

But though this distinction was true, it signifies little, unless a Roman hypothecation and an English mortgage were of the same nature; which they are not; tho' doctor *Strahan* has in his translation of *Domat* called *Hypothecation, mortgage*.

An English mortgage is an immediate conveyance of a thing moveable or immoveable, liable to be defeated by a subsequent act of the party in performing the condition: but a Roman hypothecation or *pignus*, conveys no property in the thing, but a right to have it sold for satisfaction, upon failure of performance of the condition. And therefore, if a *pignus* or hypothecation, contain a condition, that if the money be not paid at the day, the creditor shall enjoy the thing at such a price, this is held to be a good conditional sale. *Dig.* l. 20. tit. 1. l. 16. sect. 9. *Domat* l. 3. §. 3. par. 11.

In the Roman law, our mortgage is described under the head of *Conditional Sale* Cod. l. 4. tit. 54. *De pactis inter emptorem & venditorem*

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compositis, l. 2. Si fundum parentes tui ea lege vendiderunt, ut sive ipsi, sive heredes eorum emptori pretium quandocumque, vel intra certa tempora obtulissent, restitueretur, teque parato satisfacere conditioni hæeres emptoris non paret: ut contractus fides servetur, actio præscriptis verbis, vel ex vendito, tibi dabitur, habita ratione eorum, quæ post oblatam ex pacto quantitatem ex eo fundo ad adversarium pervenerunt. The same rule, as to moveables is laid down, *ibid. l. 7. Si a te comparavit is, cujus meministi: et convenit ut, si infra certum tempus soluta fuerit data quantitas, sit res inempta: remitti hanc conventionem rescripto nostro non jure petis, sed si se subtrahat, ut jure dominii eandem rem retineat denunciationis et ob signationis depositionisque remedio contra fraudem potes juri tuo consulere.*

All therefore that can be urged from the Roman law, with regard to pawns and hypothecations, is foreign to the present question, which relates to a different contract.

Whatever may be urged from our law, relating to pawns, will be also foreign; the question being upon mortgages. I admit that delivery is of the essence of an English pawn; the resolution from the year, book 5 h. 7. fol. 1. abridged in *Bro. Pledges 2c. tresp. 271.* is an authority in point, and with that agrees the determination in *B. R. Ross and Bramstead, 2 Roll. Rep. 449.*

The words of the lord chief justice, are remarkable. ‘If I lend you a horse, and, before it is restored, I say, keep that horse till I pay you ten pounds which I owe you, this is a pawn: but if I lend you a horse, and a stranger takes it from you, and I say, take that horse and keep him till I pay you ten pounds which I owe you; this is no pawn; for there is no possession given at the same time,’ no authority contradicts these resolutions. As to the
cases

cases cited *Clarke's case*, 2 *Leon.* 30. and *Brand and Lesly Yelv.* 164. they are neither of them upon pawns; and all that is resolved in them seems to be, that if a man bails goods to a third person, he may sell them and pay a particular creditor with the money arising from such sale. Such creditor has such an interest in this contract, that he may sue the bailee, if the goods are not applied to the purpose for which they were bailed.

Indeed there is scarce a case concerning pawns in which the reasoning does not suppose the pledge in the pawner's possession. Thus, where it is considered, whether the pawnee may use the pawn, it is likened to a distress, but said, that as the act of law impowers him to take the possession of a distress, he shall not use it; but as he comes to the possession of the pawn, by act of the party he may use it, provided it be not made worse thereby; so is *Conham v. Mores*, Owen 123. and the argument in *Cogs v. Barnard*, 2 lord *Raymond*, 917. 2. Sal. 522. and therefore it seems to me as repugnant, to talk of a pawn without being delivered as of a distress without a taking. The true distinction between a pawn and a mortgage, and which shews them to be contracts of quite different natures, is laid down in *Sir John Ratcliffe ver. Davis*, Noy. 137. Cro. Ja. 244, Yelv. 179. 1 Bullstr. 29. The plaintiff was possessed of a hat-band set with diamonds, which he pawned to *Whitelock* for 25 l. *Whitelock's* wife delivered the hat-band by her husband's order to the defendant, after which, *Whitelock* died, leaving his wife executrix. To her the plaintiff tendered 25 l. which she refused to receive; upon which tender and refusal, the plaintiff made a demand of the hat-band from the defendant, who refused to deliver it, the plaintiff thereon brought trover for the hat-band

band against the defendant, and had a verdict and judgment. It was resolved in that case that the absolute or general property of a pawn, was in the pawnor; tho' there was a special property in the pawnee entitling him to the custody until the condition performed; that upon payment or tender of the debt to the pawnee, and his refusal, the whole property was immediately re-vested to the pawnor; that if the pawnee bail over the pawn, still the payment or tender must be made to the pawnee or his executors, and not to the bailee. But it is otherwise, in case of a mortgage; for there if the mortgage be assigned over, the tender or payment must be made to the assignee, and not to the mortgagee; and why? because a mortgage is a conveyance of the property: which may therefore be assigned; but a pawn is no conveyance of the property; but a deposit to secure the performance of a contract. Therefore the law of pawns having nothing to do with mortgages, I shall next consider how the law stood before the 21 Jac. 1. as to creditors in general, with respect to conveyances made to their prejudice by their debtors.

The Stat. which governs the matter is † 13 El. ch. 5. S. 1, 2. the second sect. enacts, that all grants or conveyances of land or goods, to the intent to delay or defend creditors, shall as against such creditors be void. The third sect. subjects persons making such fraudulent conveyances to the forfeiture of double the value of the lands or goods so conveyed, and half a year's imprisonment, then follows a proviso, that this act shall not extend to any estate or interest, in lands or goods conveyed upon a good consideration, and *bona fide*. As this act was made to protect creditors against all conveyances made by their debtors with an intent

† See page 532 to 535.

to delay or defraud them; so it was incumbent upon courts of equity and upon juries, upon considering the whole circumstances of the case, to pronounce whether any conveyance before them was made with that intent or not; where upon a conveyance, the purchaser neglected any material step to secure his own purchase out of confidence in the debtor; and thereby this neglect naturally tended to deceive his creditors. This was *prima facie* held as a badge of fraud, as leaving the title deeds in the hands of a mortgagor in case of a mortgage of lands, or leaving goods after a sale in the vendor's hands; yet, as these were no more than badges of fraud, if from other circumstances in the case, it appeared that the title deeds could not be left in the mortgagee's hands, or the goods in the vendor's, with any intent to delay or defraud creditors, neither a court of equity nor a jury could in such a case set aside the conveyance by the 13 Eliz.

The leading case in respect to fraudulent conveyances is *Twine's case*, 3 Co. 80. *Twine* was convicted upon the penal clause in the 2d sect. of the act. The case was this: *Twine* being justly indebted to a creditor in 300 l. This was done privately, and *Twine* continued in possession of the goods after the sale, which was held to make it fraudulent, it was urged, on the other hand, that there was a just debt, and the assignment was for a good consideration, that it was a valuable one, and therefore expressly within the proviso: but it was resolved by the court, that tho' the conveyance was for a good consideration, yet it was not *bona fide*, and amongst others, the principal badge of fraud was, in respect the donor continued in possession of the goods, and used them as his own, and by reason thereof, traded and trafficked with others

others and defrauded them. And indeed generally speaking, it will be fraud to assign any other motive for a buyer of goods to leave them in the hands of the seller, but with an intent that he may deceive others into giving him credit upon a false appearance of substance. For if I have bought goods conditionally to secure a debt, my security depends on taking the goods into my own possession, and not leaving them with the former owner, who may either spoil or dispose of them. And as this laches of mine tends to the prejudice of my own contract, so it tends to mislead others into giving credit to the seller upon this false appearance of substance, which I have furnished him; the only evidence of the ownership of goods in most cases being possession and user.

This therefore in general has been most justly held to be a badge of fraud, and yet instances have happened, where letting the seller continue in possession of the goods sold after the sale, has been for the benefit of the contract, and attended with such public notoriety as to leave no room for creditors to be deceived thereby: upon which account such possession has been held to be no badge of fraud.

I shall have occasion to observe this hereafter in two cases, which were cited in the course of this cause; but this I must observe now, that in *Twine's* case there is not the least mention of a distinction between absolute and conditional sales, and the reason there given is equally applicable to both; for suppose a failing man so modest as to mortgage his goods but once, if that be to three fourths of their value, and the seller continues in possession, am I not as much deceived at to three fourths of his substance, and traffic with him upon that presumption. But if on a mortgage, no delivery of possession be necessary, why may

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not the failing man mortgage the goods for near their value two or three times over as well as once; and then I am just as much deceived as to his substance by the goods, as if they were absolutely sold.

It was insisted however, that there are cases in which the distinction between absolute and conditional conveyances as to possession after has been settled. The first cited is *Stone v. Grebbham*, 2 Buls. 226. 1 Roll. Rep. 3. which was of a grant, that from the words was held to amount to the grant of a lease for years. It was insisted to be fraudulent, because the grantee continued in possession of the land after the grant; but the court resolved, that in this case, which was a gift upon a future condition, as well as in that of a mortgage, the grantor's possession of the land would not make it fraudulent. But L. C. J. *Coke* said, if the grantor had continued in possession of the original lease, under which the land was held after such a grant, that would have made the grant fraudulent.

What argument can be drawn from this case as to possession of goods after an absolute or conditional conveyance of them I cannot see, unless the possession of lands and that of goods after a conveyance, stood upon the same foot, which undoubtedly they do not. Possession is no otherwise a badge of fraud in any case than as it tends to deceive creditors. If the possession of lands has no such tendency, and that of goods has, in the one case possession will not be fraudulent, in the other it will. A man who is in possession of land may be only tenant at will, as every mortgagor is before the condition broke; but no creditor would be deceived by such a possession; for as every man who desires me to give him cre-

Possession of lands and goods, after a conveyance, not on the same foot.

Possession of lands no tendency to deceive creditors if not attended with possession of title deeds.

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Prior mortgagee
not having title
deeds postponed
to a second who
has.

Possession of
goods evidence of
property.

No distinction
between absolute
and conditional
conveyances.

dit, thereby gives me a right of enquiring into his substance, if the possessor of such land insists upon credit as owner of that land, I may call upon him to produce the evidences of his title. If these therefore are permitted to remain in the mortgagor's hands, which the mortgagee ought to have insisted, to have in his custody, as the means of reducing the land into his possession, he has neglected what was necessary for his own security, and has also furnished the mortgagor with the means of deceiving the most careful creditor as to the ownership of the land. This has therefore been justly held a badge of fraud. And upon this principle a prior mortgagee, who has not taken the title deeds into his hands, has been postponed to a second who has. And this court will never compel such second mortgagee, to produce or discover the title deeds, for the reason given in *Head v. Egaria* 3 Will. 20. because the first mortgagee has contributed to draw in the second. But it is quite otherwise in case of goods; for where those are sold, whether absolutely or conditionally, except in very special cases, the vendee's proper method of securing them to himself, not subject to the sale or destruction of the vendor, is to take them into his own custody. If they are left in the vendor's custody; on a private transaction of sale, the most careful creditor can attain no other evidence of property, than possession and user; the vendee must therefore suffer, for having furnished the vendor means of imposing upon others as to his substance.

The next case cited to support the distinction between absolute and conditional sales was *Bucknel and Royston*, Prec. in Chanc. 286. That case was: a supercargo of an Indiaman having shipped on board goods of his own, fit for

for foreign markets, borrowed 600l. upon a bottomry bond, to pay 40l. *per cent.* interest, if the ship reigned three years; and as a security for the performance of this condition, he made a bill of sale of his goods on board to the plaintiffs. In that bill of sale it was agreed, that the vendor should act as factor to the vendee, in selling these goods at foreign markets, and investing the produce in a homeward-bound cargo. He did so, and died in the voyage home; the ship arrived; the defendant as a principal creditor took out administration to the deceased, and possessed himself of the homeward bound cargo. The plaintiffs brought their bill against him, and insisted upon their bill of sale; the defendant contended that the intestate continuing in the possession and disposition of the goods after the bill of sale, would make it fraudulent against creditors; of which number he was. Lord *Cowper* decreed for the plaintiffs. He took no distinction between absolute and conditional sales; but founded his opinion upon the fairness and notoriety of the transaction, whereby, any one who knew that the intestate had the possession and disposition of these goods, might as well know that it was not as owner, but as factor to the vendees. His words in the report are, that, 'here was not a possession calculated to acquire a false credit, as in the cases cited;' which is a plain declaration, that in the case of a mortgage or conditional sale, a possession calculated to acquire a false credit, would make it void.' But that here was no such possession; there was a farther saying by him in the same report, upon which great stress has been laid, tho' I think it amounts to no more than a repetition of such opinion; such a keeping possession by a bank-

rupt after a sale will make it void against creditors by the statute of bankrupts; and so of other sales, by the statute of fraudulent conveyances. Thereby is evidently meant such a possession after a sale as is calculated to acquire a false credit. For any other possession according to this very resolution, will not make a sale void, by the statutes of fraudulent conveyances. This therefore is so far from establishing a distinction between absolute and conditional sales, that it proves lord *Cowper* thought there was none.

The last case cited in favour of this distinction is that of *Meggot v. Mills*, 2 lord *Raym.* 186. Ca. R. *Will.* 159. from both these reports it appears the case was so defectively stated to the court, that a new trial was ordered; but it is cited for a *Dictum* of lord *Holt*, as reported by lord *Raymond*. The case seems to have been this: A man let his house to a trader, and lent him money to buy furniture for the house, and took a bill of sale of the furniture for his security. After which the trader continued in possession of both house and furniture home to his bankruptcy: there is no notice taken throughout the whole report of the statutes concerning bankruptcy. But *Holt* takes it upon the general principles of fraud and gives his opinion, that this was not such a possession as would make the bill of sale fraudulent; whether he considered it as in nature of a lease of a house ready furnished, or what other reason weighed with him is not very plain from the report, but it is plain, that he could not found his opinion upon any distinction between a possession after an absolute or after a conditional sale; for it plainly appears he thought there was none. The distinction he goes upon is between a bill of sale to a land-

a landlord, of furniture bought for his house and with his money, and a bill of sale of such furniture to any other creditor: for his words are: 'The possession in the vendor after a bill of sale to any person but the landlord, would have made it fraudulent.' This therefore is an express opinion of Holt's, that this conditional sale by way of security would have become fraudulent by a possession after, in the case of any creditor, but the landlord, and does, according to the maxim *exceptio probat regulam de rebus non exceptis*, prove the direct contrary to what it was cited to establish.

But tho' from all these cases it appears, that in the construction of 13 Eliz. there is no room for any distinction between absolute and conditional conveyances, if made with intent to delay or defraud creditors; yet it is observable that a court of equity or a jury, are by it left at large, to determine whether the conveyance was, or was not made with intent to defraud creditors. But where commissioners were to be directed, what goods and chattles in the bankrupt's possession or disposition they might meddle with, the wisdom of the legislature thought proper to describe those with the utmost precision, and upon the manifest construction and intent of the clauses in 21 Jac. 1. ch. 19. s. 11. must the decision of the present question depend.

See vol. 1. page 222.

In that stat. the latter part of the 10th sect, belongs to sect. 11. and is the preamble and key to let us into the intent of the legislature in the enacting clause. The words are, *and for that it often falls out that persons before they become bankrupts, do convey their goods to other men upon good consideration, yet still do keep the same and are reputed the owners thereof, and do dispose of the same as their own*; I am now con-

considering merely the case of things in possession, and as to them, the mischief which caused the interposition of the legislature as stated in the above preamble was plainly this; that persons before they break, make over their goods to others, perhaps for a valuable consideration; yet the persons, to whom those goods are conveyed, let the bankrupt continue in the possession of them, as if they were his own; by which false appearance of substance, he acquires a delusive credit. In this preamble there is no distinction made between absolute and conditional conveyances of goods, the mischief I have already shewn is manifestly the same, as the goods may be mortgaged twice as well as once, and above as well as under their full value, if on mortgages no delivery of possession to the mortgagee be necessary. But if mortgaged but once, for but three fourths of their value, they are till redeemed the mortgagee's property, and ought to be in his possession, and by their remaining in the mortgagor's hands, I am so far deceived as to his substance, as these goods are conditionally sold for.

Let us in the next place consider the enacting clause, which is as follows: *be it enacted, that if any time hereafter any person or persons shall become bankrupt, and at such time as they shall become bankrupt, shall by the consent of the true owner and proprietary, have in their possession, order and disposition, any goods or chattels, whereof they shall be reputed owners, and take upon them the sale, alteration or disposition, as owners, that in every such case, the said commissioners, or the greater part of them, shall have power to sell and dispose the same, to and for the benefit of the creditors, which shall seek relief by*

by the said commission, as fully as any other part of the estate of the bankrupt.

It cannot be doubted, that as the preamble makes no distinction between absolute and conditional sales, so the enacting clause will in its descriptive words take the case of a conditional vendee, if by his consent the bankrupt, after sale, has in his possession, order and disposition, the goods sold to him, is reputed the owner of them, and takes upon him the sale, alteration and disposition, as owner; unless, as was contended at the bar, the mortgagor and not the mortgagee, is the true owner and proprietary.

And I confess I can see no foundation for doubting that the conditional vendee or mortgagee, is the true owner and proprietary, nor can any such assertion to the contrary be grounded on any principle, but that of confounding pawns and mortgages, as things of the same nature. In pawns it is true, there is a special property in the pawnee, and the general property is in the pawnor according to the case cited of *Waller v Hanger*, 3 Bulstr. 17. And therefore, in the case of a pawn, some pretence of doubt might arise, who was the true owner and proprietary. But what room is there for doubt in the case of a conditional sale? The vendor thereby conveys his whole property to the vendee, liable indeed to be repurchased, or redeemed by payment of the purchase-money with interest, at a future day, but till that is done, the whole property must be in the vendee, with a right only in the vendor to redeem. In a pawn, as I said before, the contract is compleat by the delivery, and not without it; in sales, be they with or without a condition to redeem, the sale is compleat by the contract, and upon payment of the price, the vendee has a right to the de-

delivery of the things bought. This is the general rule as to sales laid down in *Longford v. Tyler* 1 *Salk*, 113. *Dyer* 20, 203, and many other books. If any one will distinguish conditional sales from this general rule, he must shew an authority or reason for such distinction. For my part, I perceive nor know of none.

Conditional vendee, not taking possession, confides in the personal quality of the vendor.

If therefore a conditional vendee, will pay his money for goods, and not insist on having them delivered, he confides in the personal qualities of his vendor, and not in the goods for the security of his debts, and ought therefore to come in under the commission like all other creditors, who placed their personal confidence in the bankrupt for the security of their debts, and not claim any preference as to those very goods which he left in the bankrupt's hands as a bait to draw in others to trust him; and as there is no one authority to warrant a distinction between absolute and conditional sales in this respect, so there is one in point which destroys that distinction.

Stephens and Bolc destroys distinction between absolute and conditional sales.

It is the case cited at the bar of * *Stephens v. Bolc et al.* determined in this court Trin. 1736, which was this, *William Tappendon*, a trader, within the statute of bankrupts, being possessed of a leasehold estate and of 3 *Hoyes*, 13 April 1729, in consideration of 1400 l. lent him by the plaintiff *Stephens*, made him an assignment of the leasehold premises, and a bill of sale of the 3 *Hoyes*, the whole redeemable upon payment of the 1400 l. with interest. In May, 1731, *William Tappendon*, being a bankrupt, a commission issued against him, and the defendants were the assignees under the commission. The plaintiff brought his bill to be paid his principal, interest and costs, or else, that the defendants might be foreclosed of

* See vol. 1. page 105.

the equity of redemption, as to the leasehold estate, and as to the 3 *Hoys*. The defendants by their answer, admitted the leasehold to be insufficient for payment of the plaintiff's debt, but insisted, as to the three *Hoys*, that as *William Tappendon* continued in the possession of them home to his bankruptcy, they were by the express words of 21 Jac. 1. liable to be seized by the commissioners, and sold for the benefit of the creditors seeking relief under the commission. My lord *Talbot*, (upon the admission of the assignees that the leasehold estate was insufficient to answer the plaintiff's debt) decreed a foreclosure as to the leasehold premises, and that the plaintiff should be admitted as a creditor under the commission, for so much of his debt as the leasehold premises were deficient in value to satisfy (which was referred to the master to settle) and he ordered the plaintiff's bill to stand dismissed as to the 3 *Hoys*, or the produce of them, (for it seems they had been sold pending the suit) and he decreed, that the money raised by the sale of these 3 *Hoys*, should be retained by the defendants, the assignees, to be by them applied to the payment of the creditors, seeking relief under the commission. It was insinuated as if subsequent resolutions had impeached the authority of this case. I know of none such.

The first mentioned was that of *Bourne v. Dodson*, heard by my lord chancellor, the 4th December 1740. I need say no more, than that it never received any judicial determination. It was an assignment of goods and ships at sea, and according to the manuscript note I have seen of that case, my lord chancellor said, that if the assignment was void, it was void at common law, and therefore directed a trial; add-

ing, that inconveniencies might perhaps arise on either side, in respect to the frequency of assignment of ships and cargoes at sea, (of which no actual possession could be delivered till the return of the ship,) if those were determined to be void, in case the assignor should in the mean time become a bankrupt. On the other hand, it might be a great encouragement to frauds, if mortgages in general should be construed to be out of 21 Jac. 1. for traders, then might borrow money to near the full value of their goods, and yet permitting the trader to continue in possession, the mortgagee might secure himself to the prejudice of the creditors.

The other case mentioned, was that of *Browne and al.* assignees of *Williams*, a bankrupt, v. *Heathcot*, heard by my lord chancellor, 27th October, 1746; according to the best information I have had of that case, it was shortly this: *Williams* and *Wilder*, partners in trade, were justly indebted to *Heathcot* in 1200l. by deed, in January 1706, they assigned over to him their ships, the *Samuel* and the *Molly*, with the outward bound cargo, and the returns of them by the homeward bound cargo, at the same time they delivered to *Heathcot*, the charter-party, invoice, bills of lading and consignment. In November 1737, *Williams* became a bankrupt. In July 1738, the ships came home, and *Heathcot* possessed himself of the ships and cargoes. It was contended, that as there had been no delivery of possession to *Heathcot*, but the possession continued in the bankrupt till the ships returned, and that therefore this was a case within 21 Jac. 1.

My lord chancellor was of a contrary opinion, viz. That it was neither within the words,

words, nor the intent of the statute : and can there be any doubt as to that? What description in the statute does this case answer? After such an assignment, with every evidence of ownership delivered over to the assignee, how could the assignor be the reputed owner of these ships or cargoes? When all the muniments or means of reducing the ships and cargoes into possession, on their arrival were delivered to the assignee, how could the assignor be said to have the ships and cargoes, *in his possession, order and disposition*?

As I observed before, this act punishes no man by the loss of his property, who has not done some act, or been guilty of some laches, in not acquiring a possession which he might have had, and which if he had obtained would have prevented the bankrupt from obtaining a delusive credit by a false shew of substance. How could it then be said in this case, that the bankrupt continued in possession by the consent of the true owner and proprietary, when it was impossible for *Heathcot* to hinder him from obtaining possession of a ship and cargo at sea? and as this is evidently out of the words of the statute, it is as clearly out of the mischief intended to be remedied thereby. For what false credit can a man acquire as owner of a ship and cargo at sea, who has not one single evidence of ownership to produce? I confess, if ships and cargoes at sea are not to be considered in the nature of choses in action, I should apprehend a delivery of the muniments, or means of reducing them into possession on their arrival, to be a delivery of possession. So the delivery of the key of a ware-house, in case of a sale of bulky goods, not capable of an immediate removal, has been held a delivery of the goods, it being all the delivery, the

Delivery of muniments of ships at sea and the key of the ware-house for bulky goods are delivery of possession.

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nature of the thing is capable of, and thereby the vendor no longer able to shew the goods as his own, and so acquire a delusive credit by the goods continuing in his ware-house. As none of these cases do in the least impeach the authority of *Stephens* and *Bole*. I shall conclude upon the whole that wherefover a trader has made a conditional bill of sale, and by the vendee's consent, the goods remain in the hands of such vendor, as owner, who is reputed the owner, and takes upon him the sale, alteration and disposition of them as owner, the commissioners of bankrupt are intitled to dispose of these goods as part of the bankrupt's estate, by the express provision of 21 Jac. 1.

This will plainly affect two of the mortgages before the court, that of the utensils to *Tomkins* in 1732, and that of a moiety of the utensils to *Stephens* in 1738, tho' it is plain, these two mortgages will admit of very different considerations; the mortgage of the real estate being an assignment to *Stephens* in 1738, of an estate originally mortgaged to *Stone*, in 1729, must as to the houses and land, take place of the mortgaged term to *Tomkins* in 1732, and as to the sum reported due to *Stevens* on the mortgage of 2300l. and more, it will probably exhaust the whole real estate, which principally consists in houses valued at 200l. *per annum*; so that little can be left to satisfy *Tomkins's* mortgage, but the utensils fixed or belonging to the brew-house: as to these, *Tomkins* must be preferred to *Stevens*, whose callateral mortgage of the moiety of the utensils, commences only in 1738. This mortgage to *Tomkins* is by lease of the house and brew-house, and utensils fixed, or belonging to the brew-house, or therewith used and

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enjoyed. This mortgage is therefore of a double nature, a lease of a house with fixtures, and with moveable goods. As to the fixtures, it seems plain to me, that nobody will be intitled to remove them until the mortgage to *Tomkins* be satisfied; for though it be certain that if a lessee erect fixtures for carrying on his trade, he may by the common law remove these fixtures during his term, and consequently the sheriff may take them in execution by *feri facias*, as is held in *Poole's case* *Sal.* 368. and by parity of reason, commissioners of bankrupt may seize them. Yet where a trader erect such fixtures in his own house, and then leaves that house with the fixtures; I apprehend that neither he, nor any who stands in his place can remove the fixtures during the term, no more than if he leases land without excepting the trees, he can cut them down during the term. And as the bankrupt could not remove them, the assignees must be in the same condition. As to the utensils not fixed, they will be liable to the seizure of the commissioners, notwithstanding the lease, upon the general rule of goods conveyed by the bankrupt; of which the true owner permits him to continue in the disposition as owner; for a lease of a house with moveable chattels, is only a gift of the chattels during the term, as is resolved in *Spencer's case* 5 Co. 16, 17. *Read v. Lawrie.* *Andr.* 4. *Dyer* 212. and many other cases. As to the collateral mortgage to *Stevens* in 1738, of the half of the brewing utensils, it will be needless to consider it. As to the fixtures, which are not valued at more than 600 l. in the master's report, they will therefore fall short of satisfying *Tomkins*, on whose mortgage 754 l. are due. As to the moveable utensils, they must come under the general rule,

Fixtures may be removed by a lessee during his term; and may be taken in execution by *feri facias*.

Lease of a house with moveable chattels is a gift of the chattels during the term.

Sale to a partner
makes no differ-
ence if he suffers
his partner to act
as owner.

Commissioners
may sell the un-
divided moiety.

So may the sheriff.

Mortgages of
things partly in
possession and
partly in action.

rule, unless a sale to a partner can make a difference, that as the partner is possessed *per my et per tout*, there could be no need of actual delivery of possession on this mortgage; but as *Stevens* had one half before, this sale gave him the entirety of the utensils. *Harvest* had no right to continue in any possession of them; *Stevens* has therefore, by his consent permitted him to have utensils in his possession, order and disposition, he is by these means still reputed owner of the moiety, and takes upon him the sale, alteration and disposition, as owner of that moiety, which brings it within the words of the statute; and as he has a delusive credit by being thus reputed the owner of that moiety, it comes plainly within the mischief intended to be remedied by the act. It may be asked, how the commissioners shall seize this undivided moiety of the moveable utensils? By seizing the whole, and selling one undivided moiety. And then the vendee will be tenant in common with the partner.

So it was resolved that the sheriff must proceed in an execution against the partnership-stock for the debts of one of the partners. *Heyden v. Heyden*, Sal. 392.

Having now considered the case of a conditional sale of things in possession, where the bankrupt remained in the disposition of them, and how far this will affect two of the mortgages before the court, I come in the next place to consider the assignment to a stranger of things partly in possession and partly in action, where the bankrupt is permitted to continue in possession of the things in possession, and in possession also of reducing the things in action into possession. This is the case of three of the mortgages before the court, each of a seventh part of his undivided moiety

moiety of that partnership, stock, utensils, debts and produce of trade.

The stock and utensils are plainly things in possession, the debts and produce of trade, are plainly things in action: after conveying a seventh of his half, each mortgagee permits him to continue in possession of the entire half of the utensils and stock, and to be in the perception of all the debts and profits of trade, in respect to his entire moiety.

Before I go farther in this matter, I shall consider the case of an assignment of a mere chose in action. The simplest case is that of a debt on bond, which is not assignable in law, but is certainly assignable in equity, and why? because, the assignor can furnish the assignee with the means of reducing it into possession, by giving him an authority to sue in his name, and by putting the bond into his hands to prove the debt: why therefore is not the delivery of these means of reducing a thing in action into possession, as requisite on such an assignment, as the delivery of a thing in a conveyance of a thing in possession? Suppose then, a trader assigns over a bond debt, and the assignee permits him to keep the bond; Why is not this within the words, intent, and mischief of the statute? A bond debt is undoubtedly a chattel, tho' I think some doubt was made of that in the argument of the case. It is true, there are some books where it is said, that by a grant of *omnia bona et catalla*, debts by bond do not pass, not because they are not personal chattels, but because they are not chattels grantable to a common person, but they may be granted or forfeited to the king, who takes them as he does chattels without deed enroll'd. *Bro. Prerogative* 40. The king takes them by forfeiture of treason or felony, as chattels of

Consideration of assignments of choses in action. Debt on bond not assignable at law.

Trader assigning a bond debt and keeping the bond, whether within the statute.

A bond debt is a chattel.

Personal actions
included in the
word goods in an
act of parliament.

of the felons. I shall just mention three authorities in so plain a case. In 3 Inst. 55. the words are: 'There is a diversity between chattels, personal in action and in possession; for if a debt be owing to two, and one is *felo de se*, he forfeiteth the whole. But otherwise it is of goods in possession for there he forfeits but his part.' *Boulston v. Ratcliff*, *Raymond* 7. in *Finche's law*, book 2. ch. 17. fo. 178. it is said, the king being tenant in common, of an entire chattel personal, shall have the whole: as if an obligation be made to two, or two are jointly possessed of a horse, and one of them is attainted, the king shall have the whole duty of the obligation and the horse; but the most conclusive case is that of *Ford v. Sheldon*, 12 Co. 1. where the first resolution of the court is in these words. 'Personal actions are as well included within the word *goods* in an act of parliament, as goods in possession.' I shall therefore make no doubt of a bond debt being a personal chattel. The assignment of it is certainly in equity, a conveyance of the chattel. The debt by the assignor's continuing to have the bond in his hands is, *in his possession, order and disposition*, and he may take upon him the sale, alteration and disposition of it: for he may receive the money due and cancel the bond, or he may assign it over to a second as well as he did to the first assignee. Whilst he has the bond in his custody, no one but must repute him owner of that debt. As such, he may, by shewing it to others acquire a delusive credit from this false appearance of a debt due to him, which is due to the assignee. He can have this bond no otherwise than by the consent of the true owner in equity, who might have insisted on the possession of the bond, when he accepted the

the assignment of it; Every man having it in his choice, whether he will accept of a defective security or not. As therefore this case is within the words, the intent, and the mischiefs of the acts, why shall we not also say, it is within the remedy? In a mortgage, possession of the land need not be delivered, but the title deeds, the means of reducing the land into possession, must be delivered, as was observed in the case of *Stone v. Grubham*. In sales of bulky goods, or of ships or cargoes at sea, where no actual possession can be given, the means of reducing them into possession are held equivalent. Why should not the same rule hold as to choses in action, as they are grantable in equity, it coming within the same reason.

In a mortgage title deeds in a sale of goods, the key of the warehouse, in ships at sea, the muniments must be delivered. Same rules as to choses in action.

It was urged, that a share in trade was a mere chose in action, capable of no delivery, and which in a court of equity will pass by the bare assignment; and has been held to pass the assignor's interest, but the day before he became a bankrupt, and was so resolved in *Small v. Oudly*, 2 Will. 427. which was this: *Norcourt*, a goldsmith, being indebted to the plaintiff *Small*, in a large sum of money, towards satisfaction of his debt, the day before he became a bankrupt, made an assignment to *Small* of two leases, and two thirds of a share he had in a wine trade, without *Small*'s being privy to his assignment. Sir *Joseph Jekyl*, the master of the Rolls, decreed in favour of the plaintiff. First, because every man till he becomes a bankrupt has a power over his own estate, and may therefore pay one creditor before another, or make over any part of his estate to one creditor, and in many cases ought to prefer one creditor before all the rest. Secondly, because this was an assignment of two thirds

Assignment of two leases and two thirds of a share in a wine-trade by a goldsmith; that share in trade was not in his possession.

thirds of a share in a wine-trade, and not in his own trade of a goldsmith. What can that distinction be founded upon, but this? The wine-trade which the bankrupt did not carry on was not in his own possession; consequently he could not remain in possession of his share after the assignment, much less could he remain so by consent of the true owner, who in this case, was ignorant of the assignment made to him. But in a trade which a man carries on himself, he may, upon assignment of a share, give the assignee possession, by admitting him a partner for that share; or he may, contrary to the statute, continue in possession of his assignee's share after the assignment made by consent of such assignee. A man's own trade is plainly of a mixed nature: it consists of things in possession and things in action. If upon the three assignments of these three seventh parts of *Harvest's* moiety, each assignee had been admitted to a partnership in the trade for his share, he would have been jointly with the other partners in possession of the stock and utensils, and in the receipt of the debts and profits arising from the trade. Why therefore shall not the debts and profits arising out of specifick goods (whereof possession ought to have been delivered) be considered in the same light as the specifick goods themselves? This is no new way of considering them even in the courts of law, against assignees of bankrupts; and surely there is as much reason to consider them in that light in their favour; since by this very statute of 21 Jac. I. all statutes concerning bankrupts are to be beneficially interpreted in favour of the creditors. If goods are consigned to a factor, and before he has sold them, he breaks, these goods are considered as the merchant's goods, and shall not be liable to the factor's bankruptcy. Suppose

Assignees should have been admitted into partnership.

Why shall not what arises out of specifick goods be considered in the same light as goods?

pose the factor sells them, money having no ear-mark to distinguish it, the merchant can only come in as a creditor under the commission; but if that money can be distinguished from the factor's own, as if he reinvest it in goods for the merchant's use, these goods, like those out of which they were purchased, shall be construed the merchant's goods, and not liable to the factor's bankruptcy, as was resolved in *Whitcomb v. Jacob*, 1 Salk. 160.

Let us go further; suppose the factor sells the merchant's goods, to be paid at a future day, as this debt arose to the factor out of the merchant's goods, if he breaks before the day of payment, and the assignees receive the money, this shall be money had, and received by them to the merchant's use, as was determined in the case of *Gunnell v. Columb*, Reserved at *nisi prius*, by lord chief justice *Holt*, in *Easter Term 1709*, and determined by lord chief justice *Parker*, and the whole court of B. R. Trin. 1710. Let us go one step further, and suppose the merchant's goods sold by the factor, who took notes of hand in his own name for the money payable at a future day, before which day the factor breaks, and his assignees receive the money on the notes. As this was a debt arising from the sale of the merchant's goods, the notes shall follow the nature of the goods out of which they arose, and will be money had and received by the assignees to the merchant's use, as was held in the case of *Surman et al.* assignees of *Scot v. Scot*. Hill. 16 Geo. 2. in C. B. Why then by a parity of reason shall it not be true here, that as the specifick goods assigned by being left in the bankrupt's possession and disposition would be liable to the commission, so the debts and new purchased goods arising

If goods are sold for payment at a future day, the debt is the merchant's.

from the sale of those goods, shall likewise be liable? As the debts and profits were left in his receipt and recovery.

I shall therefore conclude, that as these three assignments of a seventh share of the bankrupt's moiety in the partnership stock, utensils, debts and profits of trade, were accepted by the assignees without insisting on being put in possession of their respective shares, by being admitted partners, no man being bound to accept a defective security; as by their consent the bankrupt after assignment remained in the possession, order and disposition of their respective shares, and took upon him the sale, alteration and disposition thereof as owner, he was the reputed owner of the whole moiety, and by this false appearance of substance acquired a delusive credit, which, had the assignees been admitted partners for their shares, he could not have had.

They have therefore placed their confidence in the bankrupt, and not in the shares he assigned them for their security; and must consequently come in, like all other creditors, who placed a personal confidence in him under the commission, and the commissioners will be intitled to seize and dispose of these shares in the partnership effects, as part of the bankrupt's estate.

Third point.

It remains only to consider, whether the assignment of *Harvest's* moiety to *John Potter* in trust for *Stevens* the partner, will fall under the same rule. This conveyance must be considered either as an assignment to *Potter*; (tho' in trust for *Stevens*) and so *Potter* and *Stevens* taken as distinct persons, or it must be considered in the same light, as if it had been an assignment made directly to *Stevens*. I confess I cannot apprehend that it will make any
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material difference as to the decision of this question, in which of the two lights this conveyance is considered. If *Potter* is considered as distinct from *Stevens*, after a conveyance to him of *Harvest*'s moiety, he ought to have been admitted a partner for that moiety, in trust for *Stevens* till redemption, and after redemption, there would be a resulting trust for *Harvest*.

I likewise think the partnership deed ought to have been delivered to *Potter*, as part of his title; for *Harvest*'s counter part of the assignment would sufficiently secure to him, after the debt was satisfied, both the restitution of the partnership deed and the reinstating him in his moiety of the trade; and it will be hard to assign any reason for leaving the partnership deed in *Harvest*'s custody, and permitting him to act as a partner of a moiety in the trade, when he had no part left, but in order to enable him by a false shew of substance, to acquire an ill-grounded credit. But supposing *Potter* to be merely nominal, and the conveyance as if it had been directly to *Stevens* the partner, it will be true in that case, that as *Stevens* is possessed *per my and per tout* of all the joint effects, there will be no need of an actual delivery of possession to him upon such an assignment; but that is not the offence on the statute; the offence is consenting that a bankrupt shall continue in possession, after he has conveyed his property; this a partner may do as well as a stranger. Here is a conveyance of all *Harvest*'s moiety in partnership to *Stevens*. *Stevens* is the true owner of this moiety till redemption, as much as of his own. Can *Harvest* after this act as owner, or be reputed owner of any part of the

Partnership deed ought to have been delivered as part of the title.

partnership stock, but by the permission of *Stevens*.

By that permission, he has the possession, order and disposition of the partnership effects. He may and did take upon him the sale, alteration and disposition, as part owner. By this false shew of substance, he has obtained a delusive credit, especially as the partnership deed was left in his custody to shew a title to that moiety, which he acted as owner of.

This case therefore comes plainly within the intent, as well as words of 21 Jac. 1. and if it did not, what a door would be opened to frauds by the collusion of partners, if one of them after having a conveyance of the whole share of his partner, shall permit him to retain all the badges of ownership, and thereby deceive all the rest of the world as to his substance.

Partners have not the partnership stock for a security, for their private debts in preference to other creditors.

But it was insinuated, as if partners in their transactions with each other, have the partnership stock for a security, and if so, it would be absurd to say, that a partner shall be in a worse condition with a deed specifying his demand, than he would have been without it. But I apprehend there is no such rule, and that strangers and partners are, as to separate debts, upon the same foot. If one partner advances money to the partnership stock, for the other partner, or if his partner takes any of the joint stock; in such case he becomes debtor to the partnership for so much; the case of a stranger is the same if he lends money to the joint trade or partnership, he is to be paid out of the joint stock before any division can be made between the partners. The rule is generally admitted that a partner shall be admitted as a joint creditor before any dividend, for what money he advances to the joint

joint trade. In the case of *E. Cravin v. Knight*, 2 chan. rep. 8. *Richardson v. Goodwin*, 2 Vern. 293. But I know of no authority, where it is said, that a partner shall be admitted as a creditor on the stock, for which he privately lends his partner on his separate account; and there is a strong negative authority that there is no such rule. It is the case of *Croft v. Pyke*, 3 Will. 180, it was this; *Croft* was partner in trade in moieties with Sir *Thomas Forbes*, the original stock being 4000l. *Croft* married the plaintiff, and upon that occasion gave a bond to her trustees to leave his wife 1000l. if she survived him: he afterwards gave a bond to his partner Sir *Francis* for 300l. money lent. He embezzled the partnership effects and died, having made his will, and Sir *Francis* his executor, who died before probate, and his executor was the defendant *Pyke*. *Croft* the widow brought her bill against the defendant for an account, and that she might have the 1000l. so secured to her by bond, as before mentioned. The defendant insisted, that *Croft* the partner had embezzled the partnership's effects, and these embezzlements were to be answered before the plaintiff could have any right. He likewise insisted that Sir *Francis Forbes*, as executor, might have retained for his debt of 300l. and therefore so might the defendant as his executor.

This was doubted, and at last given up: my lord *King* decreed an account, and to see how much *Croft* was indebted to the partnership, and after that was satisfied, if any surplus remained, it should be applied to satisfy the plaintiff's demand, secured by bond to her trustees. If there had been any such rule that the partnership share was a security for private separate debts of one partner to another,

ther, here was a case in which it was natural to insist upon it, and not to retain as executor; and the court ought to have decreed not only that the embezzlements should be first answered, but likewise the debt by bond to Sir *Francis Forbes* of 300*l.* before any part of the partner's share was applied to satisfy the plaintiff's demand.

Objection
answered.

an- It may be said, that it will be laying great restraints upon trade: if a trader cannot mortgage his whole stock without quitting his trade, or mortgage a share of his stock without admitting the mortgagee into partnership: and I cannot but own that there may be cases in which this may be highly inconvenient. But are not the inconveniencies much greater on the other side? A man need not quit his trade, because he is no longer permitted to carry it on as a principal, when he has no sufficient fund to do it upon; nor is there any great hardship in not letting a man carry on a trade alone, when he has not a fund of his own, that enables him to carry it on. But if it is once established that the friends of a sinking man may secure themselves by mortgages of near his whole substance, and yet, permit him to appear in the eye of the world, the same substantial man as if he had made no such mortgage, without running any risque themselves, I am afraid in time, commissions of bankrupts will become very useful remedies; when those who were privy to the bankrupt's circumstances, have exhausted all the stock in securing their debts by mortgages, and there is nothing left to divide amongst the creditors, who were not let into the secret.

Upon the whole therefore, I shall conclude in giving it as my humble opinion, subject to
your

your lordship's much better judgment, that notwithstanding these six mortgages, two of moveable utensils (as well as fixed) and four of the bankrupt's moieties and shares of that moiety in the partnership stock and effects, as *Harvest* was by all these mortgages permitted, after his conveyance, to continue in the possession and disposition of the things conveyed, the commissioners by the statute of 21 Jac. 1. will be impowered to dispose of *Harvest's* moiety of the partnership stock and utensils, all but those fixed to the freehold, as well as of his moiety of the debts and profits of the trade. As to the utensils fixed to the freehold, I apprehend they will be liable to satisfy the mortgage to *Tomkins*, before they can be removed.

Lord Chief Baron *Parker's* Opinion.

My brother *Burnet* having so fully stated the case in question, I shall not repeat any part of that, but proceed directly to give my opinion upon it.

Four questions may arise upon the matters in this cause: first, whether any mortgage or sale, upon condition of redemption, falls within the clause of the statute of 21 Jac. 1, c. 19.

Secondly, whether mortgages or sales, upon condition of a specifick chattel are within this clause.

Thirdly, whether mortgages or sales, upon condition of a stock in trade, and the profits thereupon, are within it.

Fourthly, whether in this case, *Harvest's* mortgage be within it.

As to the first question, whether mortgages, or sales upon condition are within the statute of James 1. I am of opinion they are.

Let

Let us consider, in the first place, how the law stood, as to fraudulent deeds, before that statute. The common law did not make them void, but to remedy the mischief that accrued thereby was made the stat. of 13* Eliz. c. 5. by the first section of which every *seoffment, gift, alienation, or conveyance of lands or goods, or any lease, rent, or common, or any charge out of the same, or any bond, judgment and execution, to be had, to the intent to defraud creditors or others, shall be of none effect*: and afterwards in sect. 6. it says, *this shall not extend to any estate or interest, in lands or goods, made upon good consideration and bona fide.*

By this last clause there must be not only a good consideration, but also, a *bona fides*; and these words include the vendee's taking possession of the goods sold; that being the only end of buying. This appears from *Twine's* case, where lord Coke, after enumerating the several species of the signs and marks of fraud in sales, says, that tho' there was a true debt to *Twine*, and a good consideration for the gift; yet it was not within the proviso of the statute of 13 Eliz. by which the act shall not extend to any estate, &c. made on good consideration and *bona fide*; for tho' here was a good consideration, it was not *bona fide*; for no gift shall be construed to be *bona fide* within this proviso, which is accompanied with any trust, as either to permit the donor to use or have possession of the thing conveyed; and he cautions the buyer presently after the gift to take possession; for continuance of possession in the donor is a sign of trust. The possession therefore of the vendee was the mark

* See Page 552.

and stamp of the *bona fides* in that proviso, and therefore every sale, where the vendor continued in possession was *prima facie* fraudulent before the stat. of Jac. 1.

Let us now consider the preamble of that clause of 21 Jac. 1. which governs this case; it is at the end of the 10th sect. and runs thus; and for that it often happens that many persons before they become bankrupts do convey their goods to other men upon good consideration, yet still do keep the same, and are reputed the owners thereof, and dispose of the same as their own.

It is plain that the fraud is not mentioned here, yet the intent was to prevent false and delusive credit, which was a detriment to trade; and therefore every sale; whether absolute or conditional, as mortgages are, must be governed by it, and those where the vendor keeps possession, and thereby gains credit, are within the mischief meant to be remedied, and therefore within the remedy. Otherwise a man might sell his goods for full value, and by retaining the possession of them deceive his creditors. The following words in this clause *by the consent and permission of the true owners*, have been insisted on, not to be applicable to mortgages, but to absolute sales only, but that is misunderstood. The words *true owners*, are not put to denote an absolute sale and to exclude mortgages, but in opposition to the false possession of the bankrupt. A construction contrary to this, would elude the remedy meant to be given by this act.

The 13th clause gives the assignees a power to redeem lands and goods mortgaged by the

† See vol. 1. page 224.

bankrupt, as he might have done; and it has been inferred from thence, that all mortgages must be paid in preference to other creditors; but this clause relates only to such mortgages as are not affected by the former. It was not inserted to narrow the benefit meant to the creditors, but to augment it, by enabling the commissioners to make the most of the bankrupt's estate; and therefore relates only to mortgages regularly made and *bona fide*, where the mortgagee has taken the proper precautions, and hath been put in possession of the things mortgaged, as far as the nature of it will admit.

I come now to the second question, whether specifick goods and chattels, mortgaged or sold upon condition are within this clause.

I must first observe, that in a stock in trade is included a succession; the trader adding continually new goods to the taking old ones from his stock, and therefore by the word stock is meant, not only the effects then in the trader's possession, but also those that come in succession, and those must follow the nature of the stock producing them; and a conveyance of a stock in trade must therefore take in all that shall be added to that stock in a course of trade.

Whether all goods, whereof the bankrupt has the disposition, are within the clause.

Under this head will also come the question, whether all goods in the bankrupt's possession, whereof he takes upon himself the sale and disposition, are within this clause; and as the bankrupt may be in possession of the goods of others, which were not sold to them by him; but were originally theirs, and put into his hands, either for sale for their account, or safe custody; whether such goods are liable to be seized by the commissioners? This depends upon the effect the preamble must have upon that

that clause: the preamble does not extend to that case: the case intended being only that of the bankrupt, continuing in possession of goods, which were originally his and conveyed away by him. In many cases, a narrow preamble shall not restrain the general purview of the statute; especially where such statute is made to remedy a mischief. 1 Jones 163. Palmer 485. But the true rule must be, that where the not restraining the generality of the enacting clause may cause a mischief, there the preamble must restrain and explain the clause: and there are instances of this kind upon the very question, as where jewels were delivered to a Jew to be sold, tho' this Jew sold goods for himself as well as for other persons, these appearing not to be the Jew's property, but given to him as a factor, were held not to be within the statute. In 3 Will. 185. Lord King takes the difference, which is to be made on this head of goods of others, being in the possession of the bankrupt. When a merchant beyond sea consigns goods to a merchant in *London*, on account of the latter, and draws bills on him for such goods; tho' the money is not paid, yet the property of the goods vests in the merchant in *London*, who is debtor for them, and consequently they are liable to his debts; but where a merchant beyond sea consigns goods to a factor in *London*, who receives them, the factor in this case being only a servant or agent for the merchant beyond sea, can have no property in such goods. So far for goods delivered to be sold: as to those in custody, there is the following case.

In a petition *ex parte Marsh*, One *Wright* upon his marriage with a widow, received 100l. in money and several pieces of plate, which

which were her property; and before his marriage agreed that the money and all her other effects should be secured for her separate use and disposition, and gave a bond to trustees for 1200l. for securing the money. The wife appointed the money to be paid to A. and left him her other effects by a writing in nature of a will. The wife died, and the husband became bankrupt; the petition was to come in for 600l. under the commission, and to have the specifick plate restored, and the specificks piece of plate were restored to the legatee of the wife. Indeed, in * *Copeman and Gallant*, 1 Will. 314. The notion of a preamble governing and restraining an enacting clause is exploded: and tho' lord *Cowper* held the goods in that case were out of the statute; yet he did it upon another reason; because the Assignment of them was made with an honest intent. I have the greatest honour for his memory. But tho' I approve the decree he made in that cause, I cannot approve the reason he grounded it on; for if an honest intent was sufficient to take a case out of the statutes, the effect of that act of parliament would extend but to a very little way. The clause is made for persons who leave their goods in the possession of the bankrupt, and by such possession give him a credit; and the provision made is in order to prevent that credit: now when persons act by commission only, and are known so to do, it must be known the goods they sell are for others, and can it be then said, that those who advance them money, do it upon their visible stock? This therefore is not within the mischief meant to be remedied by that statute. But the question will be, whether the goods mentioned in the master's re-

* See vol. 1. page 469;

port are within it, and these are all such as were originally the bankrupts, and were by him conveyed to others, and therefore not within this distinction. They are of two different kinds, fixtures and utensils that are moveable. As to fixtures in general, they are looked upon as part of the freehold; but as they may be severed by a particular grant, (and that has been done here), that may vary the rights of the parties. They are under the same rule as trees growing upon land. In *Hobart* 173, it is laid down that by the grant of trees by tenant in fee-simple, they are absolutely passed away from the grantor and his heirs, and vested in the grantee and passed to his executors and administrators; Being in the understanding of law divided as chattels from the freehold, and the grantee may sell them when he will and in *Owen*; 49, it is said, that tho' the trees were once a chattel, yet by a purchase they were again united to the freehold. These fixtures were mortgaged separately to *Stone* in 1731, and therefore were chattels and separated from the freehold, but they were reunited by the subsequent deed, and therefore passed to *Tomkins* by the mortgage in 1732, that being a mortgage of all together, the land, house and fixtures; and as they stand united, they cannot now be removed from the land till *Tompkins* is paid.

But the utensils unfixed and the stock of malt, are under a quite different rule; they are moveable and liable to be seized by the commissioners. The fixtures could not, being mortgaged, be removed by the bankrupt himself, and the commissioners cannot do more than he could; the mortgagee has possession of them, by his possession of the land and house, but here was no possession of the moveable

Goods must be delivered, when they can, if not the muniments.

able utensils and stock in trade; they were of a nature to be delivered, and should have been delivered; for when goods are of a nature to be delivered, they must be so, else the vendor continues in the possession designed by the statute. If the goods themselves cannot be delivered, the muniments and means of reducing them into possession must be given to the vendee, and that will suffice. Upon this ground I agree that the delivery of the key of a ware-house is a good delivery of the goods therein contained. *Just. Inst. Lib. 2. Tit. 1. de rerum divisione* * Sect. 45. Dig. lib. 18. tit. 1. *De contrahenda emptione*, L. 74 † and lib. 41. tit. 2. *de acquirenda vel amittenda possessione* l. 1. ‡ sect. 21. for there can be no shewing to obtain a false credit by, and also with the resolution in *Brown and Heathcot*; there the vendee had done all that the nature of that contract admitted of, he had got the muniments and means of possession, and the vendor could not have raised a false credit upon what he had conveyed, but that was not done in the present case. It is objected that an undivided share of a stock and utensils in trade,

* *Si quis merces in horreo depositas vendiderit, simul atque claves horrei tradiderit emptori, transfert proprietatem mercium ad emptorem.*

† *Clavibus traditis, ita mercium in horreis conditarum possessio tradita videtur, si claves apud horrea traditae sint, quo facto, confestim emptor dominium, et possessionem adipiscitur: et si non aperuerit horrea: quod si venditoris merces non fuerint, usucapio confestim inchoabitur.*

‡ *Si jusserim venditorem procuratori rem tradere, cum ea in praesentia sit: videri mihi traditam, Priscus ait. Idemque esse, si nummos debitorem jusserim alii dare. Non est enim corpore et actu necesse adprehendere possessionem: sed etiam oculis, et affectu et argumento esse eas res, quae propter magnitudinem ponderis moveri non possunt; ut columnas, nam pro traditis eas haberi, si in re praesenti consenserint, et vina tradita videntur, cum claves cellae vinariae emptori traditae fuerint.*

will not admit of a separate proportion and a separate disposition; and it is true that partners have a joint and undivided interest, but their rights are several. The sheriff upon an execution may take possession of an undivided moiety and sell it, and the vendee becomes an owner with the other partner, and so it would have been here.

I shall now consider some of the cases cited on this head, that of *Meggot v. Mills* has been cited to shew that the honesty of the original agreement might take this out of the statute. the honesty of the agreement might properly come into consideration in that case. The grounds it was decided upon were the common law and the stat. Eliz. it does not appear that the 21 Jac. 1. was thought of. That makes it differ widely from this case. In that of *Cole v. Davis*, 1 lord Raym. The opinion is upon a *fieri facias* which is a thing of a public nature, and therefore differs widely from a sale made privately, and at the good will of the party; neither is the statute of Jac. 1. mentioned there. In that of *Small v. Audley*, 2 Will. 427, The assignment was not of the stock of the traders own trade publickly professed by him; but of another trade which might make a great difference, but even in this case the stat. of Ja. 1. was overlooked. The case of *Bucknal v. Royston*, *Prec. in Chan.* 286, depended solely upon the law of frauds. There was no bankruptcy in this case, and the person keeping possession was not to give a false credit to him, but for particular reasons agreed upon at the time of the contract. But even there lord Cowper said, that in case of a bankrupt, such keeping possession after sale, would make the sale void against the creditors by the statute, so this is rather on this side.

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These cases therefore do not in the least invalidate the present construction. In the present case all the circumstances attending these mortgages, concur to bring them within the stat. of 21 Jac. 1. the transaction was secret; no possession was taken by the vendees, and this was done so on purpose, to give the mortgagor that credit which the statute was made to prevent.

The third question is, whether mortgages or sales upon condition, of a part or share in trade by one of the partners are within this clause.

Mortgage of a share in trade, what.

Under this comes the consideration of assignments and conveyances of things in action; for a mortgage of a share in trade by one of the partners, is a mortgage of what shall appear to be that partner's, upon the balance of the accounts of the transactions in that trade; and this is of the nature of things in action. It has been held that a bond, which is a thing in action shall be forfeited to the king, upon the obligee's being attained of treason or felony, 3 *Inst.* 55. and in *Yelv.* 86. and in *Ford and Sheldon's* case 12 Co. 1. it is laid down that personal actions are included in the word *goods* in an act of parliament, as much as goods in possession: now the words *goods* and *chattels* take in choses in action in the construction of an act of parliament; much more ought they do so in this; since it is expressly said in the first clause of the statute that every thing shall be construed beneficially for creditors. It has been insisted no legal assignment can be made of choses in action, but it will be good in equity only; yet in case of a bond assigned, the bond may, nay, must be delivered up to the assignee. Indeed in cases of book-debts assigned, it will be sufficient to give notice to the

Bond assigned must be delivered up to the assignee.

the debtor of his assignment; because that is the most that can be done in that case. *Domat.* book 1. tit. 2. l. 2 paragr. 9. explains this matter fully. Things incorporeal, such as an inheritance, a debt or any other right, cannot properly be delivered, no more than touched, but the power of using them is in lieu of delivery. Thus the feller of a right of service does, as it were, deliver it when he suffers the buyer to make use of it. Thus he who sells or transfers a debt, or any right, gives to the buyer or his assignees, a kind of possession by the power which he gives them to exercise this right in causing the transfer or assignment to be intimated to the debtor; who, after the said intimation, cannot own any other master or possessor of this right, but the assignee to whom it is transferred. This explains the nature of assignments and shews, tho' actual delivery is not to be made, yet other steps may be taken, which will prevent the vendor from appearing the owner. Therefore the words of this clause extended to choses in action, and all that could be done in this case not having been done, (for no notice was given to the debtors of this partnership of this mortgage,) it is fairly within this clause of the act of James I.

The fourth general question is, whether *Harvest's* mortgage to *Potter* in trust for *Stevens*, be within the clause of the statute of Jam. I. and I am of opinion that it is within it. It has been insisted, that tho' *Potter* did not take possession of the stock and share in trade that was conveyed by this mortgage, yet he was merely a nominal, and *Stevens* the real mortgagee; and that *Stevens*, being previous to this mortgage a joint partner with *Harvest*, he was possessed with him of the whole, and therefore was in such a possession, as it is required

Stevens ought to
have taken the
sole possession.

Stevens lends his
money exclusive
of the partner-
ship, and there-
fore is in the
condition of a
stranger.

the true owner should have. But tho' *Stevens* was jointly in possession before this mortgage, still the question remains, whether, when he became intitled to the other share, he ought not to have taken the sole possession of the whole trade, exclusive of *Harvest*? And I am of opinion he ought; for by the statute the vendee must take such possession as will prevent the vendor from being reputed the owner of what he has sold. But it is not disputed, but that *Harvest* was reputed the owner jointly with *Stevens* after this mortgage. It has been insisted farther, that *Stevens* having a possession, the law will construe the possession according to the right, but still the same question remains, whether the possession of *Stevens*, however construed, was such a one as excluded *Harvest* from an apparent ownership, which it plainly was not; since *Stevens* permitted *Harvest* to act as if in the possession of his share. It has been indeed truly said, that if one partner borrows any share of the effects, or embezzles any part of the stock, the other partner shall have his remedy out of this partnership share. Ab. Eq. Ca. 55. and 2 *Vern.* 293. and that according to this rule was determined the case of *Pyke v. Croft*, 3 *Will.* 180, the reason of this case is plain; if one partner is charged with more than he ought to be by the act of his partner, equity gives him his remedy upon the stock; because he comes in the place of creditors, whom he has satisfied, but these arguments come not within this case. This is no transaction in the partnership. *Stevens* lends his money exclusive of his partnership, and therefore is in no better condition than a stranger lending money upon the same security; and if there is any difference between him and the stranger, it is to his disadvantage; for being

being partner to the borrower, and therefore privy to his bad circumstances, he becomes an accomplice of the fraud, and is assistant to him in imposing upon the public.

Lord Chief Justice *Lee's* Opinion.

AS I concur in opinion with my brothers, very little is left for me to speak upon this case. My brother *Burnet* has observed the difference between a *Roman pignus* and an *English pawn*, and has proved that they both are to be considered as foreign to this case, which is of an English mortgage only; that whether the sale be conditional or absolute, it is the same with regard to the statute James I. Next he has shewn the state of creditors, with respect to conveyances made to them by their debtors before that statute: that it was then left to juries, and courts of law to judge of fraud by the circumstances of the transaction; and so determine whether the conveyance was fraudulent or void: and he has declared that this was a question which was to receive its determination from the statute of 21 Jac. 1. only. All the cases have been very fully answered, and therefore I shall say nothing upon them, or upon the statute of Eliz. but shall confine myself to the statute of Jac. 1. because that statute has drawn the line, and laid down the *certi fines ultra quos citraque non quit consistere rectum*. Upon this statute, three questions will arise.

First; whether a mortgagee is not an owner of such a kind, that there should have been a delivery made to him of what is contained in the mortgage?

Secondly; whether choses in action mortgaged or sold upon condition, should not be delivered, as far as they are capable of being delivered?

Thirdly; whether *Stevens* had such a possession as will exempt him from being accounted an owner, by whose permission *Harvest* the bankrupt has had in his possession goods and chattels; whereof he was reputed owner, and thereby gained a false credit.

As to the first question, the general* preamble of this stat. describes the evils that were intended to be remedied, and says, that defects were found in the former statutes, both as to the description of the bankrupt, and the power given to the commissioners. One of the defects to be remedied was, the shortness of the power of the commissioners; and the evil it occasioned is recited in the preamble in question, in the end of the 13 sect. "and for that it often falls out, that many persons before they become bankrupts, do convey their goods to other men upon good consideration; yet still do keep the same and are reputed the owners thereof, and dispose of them as their own."

This is exactly our case, and therefore there is no necessity of entering into the questions upon the restraining clause. In the statute of Eliz. there is an express provision that it should not extend to conveyances *Bona fide*: whether those, which came before the commissioners, were so or not, was a matter hard to be discovered, and therefore a great difficulty lay upon the commissioners; to remove which, this short and plain direction is given in the stat. of Jac. 1. That if a man becomes a

* See vol. 1. page 216.

bankrupt, and has in his possession, by the permission of the true owner, goods, whereof he is reputed the owner, the commissioners may sell and dispose of such goods for the benefit of creditors under the commission. This puts reputed ownership upon the same footing as real ownership: If therefore a person buying goods is the true owner, and has suffered the vendor to act as reputed owner, he by this has gained the bankrupt a reputation of substance, which has drawn in other creditors, and is within the described remedy given by this clause. The question therefore, is whether a mortgagee be the true owner and proprietor? the clause of the stat. of Jam. I. gives the description, that *† if any person shall grant, convey, or assure any lands, tenements, hereditaments, goods, chattels, or other estate, unto any person or persons, upon credit, or power of redemption, at a day to come, by payment of money or otherwise.* The words are express, and what is the effect of a grant, conveyance or assurance upon condition, is shewn in Co. Lit. 210. *If a man make a feoffment in fee, upon condition that the feoffee shall pay to the feoffor his heirs or assigns, 20 l. at such a day; and before the day the feoffor makes his executors and dieth, the feoffee may pay the same either to the heir or to the executors; for they are his assigns in law to this intent. But if a man make a feoffment in fee, upon condition that if the feoffor pay the feoffee, his heirs or assigns 20 l. before such a feast day, and before the feast, the feoffee makes his executors and dieth, the feoffor ought to pay the money to the heirs, and not to the executors; for the executors, in this case, are*

† See vol. 1. page 222. par. 43.

no assignees in law, and the reason of this diversity is this; for that in the first case, the law must of necessity find out assigns; because there cannot be any assign in deed; for the feoffor hath but a bare condition, and no estate in the land, which he can assign over. But in the other case, the feoffee hath an estate in the land which he may assign over; and where there may be assigns in deed, the law shall never seek out or appoint any assign in law; and albeit the feoffor made no assignment of the estate, yet the executors cannot be assignees; because assignees were only intended by the condition, to be assignees of the estate. And in Cro. Jac. 244. as well as in lord Raym, in Coggs v. Barnard, the difference between a pawnee and mortgagee is laid down, that a mortgagee hath an absolute interest, and a pawnee only a special property in the goods to detain them as his security; and in the stat. the words *true owner* are put in opposition to the words *reputed owner*. It is very true that the case of *Stone v. Gribbard*, 2 Bulstr. 226. lays it down that the possession of the mortgagor is not fraudulent; but that if an absolute conveyance is made, there the possession in him that conveys will have the face of fraud. But this case was entirely upon the statute of Eliz. and the common law. The plan of the stat. Eliz. differs from that of Jac. 1. in this particularly, that this last statute supposes the party to be an honest mortgagee, but will not suffer him to have a particular privilege above other creditors; because he has not taken possession; and 'tis more like the case that may happen upon the registering acts, where a man loses the benefit of his conveyance, by neglecting to do the particular thing which the statute prescribes and directs. In this statute there is a plain direction what the donee is to do, which is not to suffer the donor

nor to continue in possession, and if the direction here given to the vendees, is as plain as that given in the registering acts, they must be followed in their case, as much as those under the registering acts. Nothing that has been cited in this case can serve to establish the difference contended for betwixt an absolute and a conditional sale; but may be made use of to infer that a mortgagee is to be considered as the true owner; for the book says, that tho' the mortgagor is not a disseisor, yet he is tenant at will of the mortgagee. If so, who is the true owner? The mortgagee has the lands for a security, so the mortgagor has nothing but his condition; and the mortgagee has such an interest as makes him be considered as the true owner. As to the case of *Buxton v. Royston* and *Meggot and Mills*, they have been answered already; that of *Stevens v. Sawle* is in point, and my lord Cowper's saying in that case of *Bucknal v. Royston* is applicable here, *if this was a case of a bankrupt, such keeping possession after sale, would make the sale void against the creditors by the statute*, whereby he might mean such possession as is described by this statute. This case of *Stevens v. Sawle*, may be considered as determining the question upon specifick goods and chattels, and I think the same rule will reach to choses in action. I am come now to the second question, whether the words *goods and chattels* do not include choses in action. *Swin. 475*, explaining the word *bona*, says, that the Civil Law does by the word *goods* understand not only corporeal chattels, but also things that are incorporeal. It is true, he adds, "but by the laws of this realm in deeds and contracts among the living, the word *goods* is otherwise understood, comprehending such things as be either with or without life, as a horse, or a bed, &c. but nei-

neither such things as be of the nature of freehold, nor leases for years, much less for lives, nor things in action, as a debt upon a promise or obligation." And in 8 Co. *Cowley's* case 53. which was upon an action brought against an inn-holder, who by the custom of the realm is to keep safe the *bona et catalla*, of those who lodge in his Inn, the opinion of the judges was that he should be answerable for a bond, tho' the words *bona et Catalla*, do not of their proper nature extend to charters and evidences concerning freeholds or inheritances, or obligations, or other deeds or specialties, being things in action. This opinion was grounded upon the legal notion, that they are not grantable as things in possession, as in 4 Co. 65. where it is said, that custom warrants the chamberlain of *London* to take obligations, which go to his successors, yet a bishop cannot take a recognisance, but in his private capacity; for there wants such custom to take a chattel in their political capacity. Throughout this whole resolution, obligation is called a chattel; and in *Stamford's* prerogative 45. it is said, that under the word *catalla*, is included a right of action for goods; and in 12 Co. 1. *Ford and Sheldon's* case, this kind of reasoning is taken notice of, and it is particularly laid down, that in an act of parliament, the words *goods* and *chattels* shall take in things in action. Now, if these words in a statute do include choses in action, it is clear, that under the words of this stat. of Jac. 1. all the debts due to the partnership may be distributable, as well as the goods themselves, and the debts due to the partnership, follow the nature of the stock producing them. In *Swinb.* 483. it is said, *if a man devises his moveable goods to one person, and his immoveable to another, those debts which did arise by occasion of things moveable,*
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and personal, belong to that person to whom the moveable goods are bequeathed; but those debts which grow by occasion of something immoveable, for the recovery whereof, there lieth an action real, they belong to that person, to whom the testator has bequeathed his immoveable goods. By which it appears he thought the new goods, were to follow the nature of those that produced them; so it is here. The last question is as to the mortgage to Potter in trust for Stevens; and as to this, taking that mortgage to Potter as a mortgage to Stevens, tho' he had had possession as a partner, yet he has not had such a possession as the statute requires he should have had as true owner. This was a transaction foreign to the partnership affairs, and as to transactions that do not concern the stock of a partnership, the partners are disunited, and are to each other as strangers, and therefore they cannot have any lien upon the joint stock. Tho' no absolute stress is to be laid upon citations out of the civil law; yet they may be used as the opinions of learned men. In Domat B. 1. it is said, if there remain any debts to be paid of the society and expences to be laid out, and any future profits or leases, they take their respective sureties for all these consequences, and that after they are disunited and the partnership ended, they are then as strangers to each other.

To conclude; the stat. of Jam. 1. is the rule to be followed in the consideration of this case. The intent of that statute was to prevent persons conveying their goods to other men upon good consideration and keeping possession thereof, to gain a false credit by such possession. The method taken to enforce that intent was to punish the persons, who be-

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ing real owners of the goods, suffer the vendor to keep possession and thereby gain that false credit; and the punishment inflicted was, that such owners should not be preferred to the other creditors, but that the goods in the possession of the bankrupt should be distributable equally amongst all the creditors; and therefore the mortgages in this case, not being followed by possession, must be governed by this statute, and cannot prevent the commissioners from seizing the goods mortgaged.

Lord Chancellor. The general questions in this case are two; first, whether any mortgage or conditional conveyance of any goods or chattels is within the statute of 21 Jac. 1. c. 19? Secondly; whether the mortgages now in question, or any, and which of them are within the statute? Upon the first question, I shall not enter into any particular argument made upon the two points contained in it.

First; whether the enacting clause may extend to all the goods in the custody of the bankrupt, or whether it is restrained by the preamble, to the goods which were originally his own, or have been conveyed by him to others.

Secondly; whether choses in action are within this clause: as to the first of these, my lord chief Baron, has cleared it up; but whether confined or no, this case falls within the act; because it is not disputed, but all the goods in question were originally the bankrupt's, and moved from him.

And I incline to concur with my lord chief justice *Holt*, that this clause is restrained by the preamble, which must serve as a key to it, and differ from lord *Cowper*'s opinion, that a

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general clause shall not be restrained. The rule laid down by my lord chief baron, is the true one, but as I said before, the question is out of the case. As to the question concerning choses in action, they have been proved fully to be within the description of goods and chattels in this clause. I will only add one argument to what has been said upon that question; that this is warranted by the next preceding * clause in this very act; where it enacts a remedy in case the bankrupt makes himself accomptant with the king, it says, that if it shall happen, any lands, tenements, goods, chattels, debts, or other estate of any bankrupt, to be extended after such time as he or she is become a bankrupt, by any person or persons, under colour or pretence, of his or their being an accomptant, or any indebted to our sovereign lord the king's majesty, his heirs or successors, that then it shall be lawful for the said commissioners, &c. to order and dispose of all such lands, tenements, hereditaments, goods, chattels and debts, so extended as aforesaid, to and for the use of the creditors, which shall seek relief by the said commission; and that the order and disposition of the said commissioners, or the greater part of them, shall be good and available against the said extent, and that such person or persons, to whom the said lands, tenements, hereditaments, goods and chattels, so extended, shall be bargained, sold, granted or assigned by the commissioners aforesaid, or the greater part (Dropping there the word debts) of them shall have good remedy to have, demand, and recover the same, and against such person or persons who shall detain the same.

* See vol. 1. page 222. par. 43.

It is observable upon this clause, that when it comes to the remedy given to the assignees to recover, it rests intirely upon the description of goods and chattels; shewing the whole estate of the bankrupt comes under this description, and the very next clause is, that under the present consideration. This falls in with the resolution in 12 Co *Ford* and *Sheldon's* case; that acts of parliament disposing of goods and chattels, take in choses in action. In this very case the king's granting by patent all the goods which come to him by a forfeiture, was said to extend to goods in possession, and not to things in action; and yet the judges resolved, if recognizances were acknowledged to the party himself, they were given to the king; because personal actions are as well included in the word *goods* in an act of parliament as goods in possession. But as by law, things in action cannot be granted over; therefore things in action pass not by grant without special words; but in an act of parliament, which can pass any thing, it is otherwise.

These are general principles. First, it appears by the whole tenor of this act of parliament, that the intent of the legislature was, that equal distribution of the bankrupt's estate among his creditors, should be attained as far as possible.

Secondly; to attain this, the act should be construed beneficially for the general creditors; and therefore it is said in the 1st* section, that *all and singular, the aforesaid statutes and laws heretofore made against bankrupts, and*

* See vol. I. page 216. par. 34.

for the recovery whereof there lieth on action relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help, and relief of the creditors, of such person or persons as already be, or hereafter shall become bankrupt.

Thirdly; The general view and intent of this provision, and what was under consideration at that time, was, to prevent traders from gaining a delusive credit under a false appearance of substance.

Fourthly; That the legislature judged they might in justice do this; by subjecting all the goods and chattels, left in the possession of the bankrupt, notwithstanding a valuable consideration was paid for the same: because, where the vendee leaves such goods and chattels in his possession, he trusts as much to the general credit of the bankrupt, as these creditors who have only his notes; the bankrupt having it in his power to sell all these goods the next day. In such case the owner could not recover them from the vendee, and would be left to his personal remedy against the bankrupt. This ground holds equally against conditional sales as against absolute, and if mortgages were not within this statute, it would not only be restraining, but overturning the statute. A trader, instead of making an absolute sale would make such mortgages; and there is a greater facility in this case to mortgage the same thing over and over again, as it was done in the present case. The legislature have explained their own sense, by putting the words *true owner* in opposition to *reputed owner*; and then they can mean only such person, who by a specious possession gives himself the appearance of a property, which he has not.

The

The second question is, whether any of the mortgages stated in the master's report are within this statute? If the opinion of the judges is right, it follows, that the mortgages to *Reynel*, *Stevens*, and *Potter*, and so much of the assignment to *Stevens* as relates to the utensils not fixed to the freehold, are within this clause.

The differences endeavoured to be established have been all fully cleared up; and if the general objections made in this case, were to prevail, it would let in fraud to all trades carried on in partnership, and it might be exercised on all the goods in which the partners trade. This has been made to appear so plainly that it needs no further argument. As to choses in action, the rules of equity ought to follow those of law, and where property is established by an act of parliament, equity must follow the rules laid down by that act, in like manner as it follows the law; else there would be the greatest confusion: this is exemplified in the statutes relating to papists; the courts of equity regulate their determinations according to the rules laid down there.

There is a third point as to *Potter's* mortgage; which has been argued with reasons peculiar to that part of the case. It is said, that this mortgage is to be considered as if it was made to *Stevens*; and so I think as to some part; yet upon the whole, that will not make any difference as to that point. Whatever legal interest passed by this mortgage in any of the specifick chattels in possession, that legal interest vested in *Potter*; and a court of law would have taken no notice of the trust, and if an act of parliament has made that interest void against the assignees, a court of equity would

would not set up a trust to make it. But as to that part wherein an equity only would pass, that equity would vest directly in *Stevens*: and here it is the objection arises. Where an equity only passed, it did not vest in *Potter*, but in *Stevens*; and therefore it must be considered as if the mortgage had been made directly to *Stevens*; and *Stevens* being a partner ought to have such an allowance made as would be made upon taking the partnership account; in which he would, as such, have a lien upon the partnership stock and profits for so much money as he had advanced. But it is said that by his having taken a special mortgage of *Harvest's* share of the partnership stock, he should not thereby be put in a worse condition than he would have been, if no such mortgage had been made; but this foundation is false; for it ought to be thus: that where a partner lends money to his partner, which is not lent for carrying on of their trade, he ought out of the money arising out of the joint stock to be preferred to all separate creditors for their debt; but I can find no precedent for this after a bankruptcy of the borrowing partners, or after his death. It is indeed different, when a court must do justice between the partners themselves who are both in credit and alive.

In the case of *Meyrick v. Royal-Exchange Company*, the attempt was to make his stock in the *London Assurance* subject to his debts. The points determined there are not material in this case. I was of council in that cause; but it was not contended that in this case of partnership, any right of partnership should extend farther than to partnership transactions; that a loan not relative to the partnership transactions, should be brought into the partner-

ship's accounts. The case of *Pyke and Croft*, is as strong a case as any can be against this doctrine; for it was not there attempted to bring in a bond debt due to one partner in right of his partnership; but only to do it by way of retainer, as executor; and therefore the money taken out of the partnership stock, was allowed to be brought into the account; but that due upon bond was not.

If it should be determined that one partner, by lending out of his separate estate to the other partner, might gain a lien on the other partner's share of the stock, it would open a door to great frauds. A man may be taken in partner to one half of the joint stock, which he would immediately transfer to the other partner, and he may be reputed owner thereof, and he may gain credit, and people may give him a separate credit upon that account; and yet upon the upshot he would turn out to have no property at all. There might be many other instances mentioned of the tendency of this doctrine to fraud, and the mischief it would produce.

This case has been so fully gone through and examined, that I will not dwell upon it longer. I shall add but one thing more. It has been said, that the extending the act of parliament to these cases, will be a determination, from whence great mischiefs must arise to trade and credit; and that it will put a stop to lending and borrowing, as a security cannot be given without exposing the borrower's credit; and it may be so; but on the other hand, a different determination tends to evert an act of parliament; and as this is the law, we must adhere to the law; and the judges must be bound by it. If this law brings an inconvenience

venience to trade and credit, the legislature must remedy that inconvenience, by changing the law; but it must be allowed on the other hand, that great inconvenience might arise from a contrary determination, by giving a false credit to persons who have not the true property. And I think it was the full intent of the act; which was made in times, when the greater simplicity that prevailed did not let in those airy notions of credit, which prevail now; giving way to which, has done more mischief than good to the property of mankind; but upon whatever side the weight of convenience lies, the law is so, and we must not depart from it.

F I N I S.



I N D E X.

Bills of Exchange.

O F the origin and use of Exchange	Page 65
Usury first introduced by the Jews	67
What a bill of exchange is, and of the form and words necessary to be used therein	71
Must be in writing	<i>ib.</i>
Of the form thereof	<i>ib.</i>
No precise words necessary	72
Nor value received	<i>ib.</i>
How far it extends, and to whom	<i>ib.</i>
Payable to one or other, good	<i>ib.</i>
Payable out of a particular fund, not good	<i>ib.</i>
Nor one payable out of the drawer's subsistence	73
But one payable out of the drawer's half-yearly pay by advance is good	<i>ib.</i>
But not one payable out of the fifth payment when due	<i>ib.</i>
An authority to receive money to drawer's use no bill of exchange	<i>ib.</i>
Nor one payable to order	74
Foreign bills governed by the custom of merchants	75
Drawer of bill liable to an action	<i>ib.</i>
Statute of limitations pleadable to a bill of exchange, which is no specialty	<i>ib.</i>
Bill of exchange only a simple contract debt	76
How drawn	<i>ib.</i>
Usance, what it is	77
Double, treble usance	<i>ib.</i>
Time of payment alters bills of exchange	<i>ib.</i>
Usances from different places to different places	<i>ib.</i>
Drawer of a bill must have notice of its being protested	78
Not necessary to make protest the same day the money is due	<i>ib.</i>
Within what time protest must be made	<i>ib.</i>
When if accepted or payable at sight	<i>ib.</i>
Indorsee may bring an action, notwithstanding his own indorsement thereon	<i>ib.</i>
Where no protest necessary	<i>ib.</i>
Where protest on copy of a bill is sufficient	<i>ib.</i>
Protest need not be made till after days of grace	79
Bill may be protested before the day, for better security, but not for non-payment	<i>ib.</i>
Foreign bill must be protested on the last day of payment	<i>ib.</i>
If the last of the three days be a great holiday, the day before is the day of payment	80
	Bill

Bill may be protested without notice	<i>ib.</i>
<i>Indeb. assump.</i> lies on a protested bill	<i>ib.</i>
Where inland bills may be protested	<i>ib.</i>
Form of the protest	81
Protest, or notice thereof, to be given in fourteen days after made, and sixpence to be paid for the same	<i>ib.</i>
Protest on a foreign bill makes the drawer liable	<i>ib.</i>
In what case a protest may be made	<i>ib.</i>
Protest need not be proved	82
It is nothing more than that a bill is not accepted or paid	<i>ib.</i>
Demand before protest	83
Protest not to be made if the party to whom the money is payable dies	<i>ib.</i>
When two protests necessary	<i>ib.</i>
Protest to be made by a notary public	84
It is not necessary in an action on an inland bill	<i>ib.</i>
Bills of exchange drawn in England, &c. of five pounds, or up- wards, payable at a certain number of days, &c. after acceptance, and three days after due, party may protest the same	87
In default of protest made, &c. person failing liable to costs	<i>ib.</i>
Bill lost or miscarried, drawer to give another	88
Party refusing to underwrite a bill of exchange, it may be pro- tested for non-acceptance	<i>ib.</i>
No acceptance of inland bills of exchange to be sufficient, unless the same be underwritten, nor drawer thereof liable to costs	89
No protest necessary for non-payment, unless the bill be drawn for twenty pounds, or upwards, by whom the protest shall be made	<i>ib.</i>
Acceptance of a bill esteemed full payment of a debt	90
Drawer need not be a merchant	<i>ib.</i>
Though indorsement void, drawer liable	<i>ib.</i>
How liable if the bill mentions <i>value received</i> ; and how if it does not	<i>ib.</i>
Not liable if the money be not demanded in convenient time	<i>ib.</i>
When the drawer cannot be resorted to	91
Drawer of bill of exchange, though given without consideration, shall not be relieved against a third person, to whom it was af- signed for an honest debt	<i>ib.</i>
What neglect will discharge the drawer	<i>ib.</i>
Protest makes drawer of a foreign bill liable	92
What acceptance does not bind the drawer	<i>ib.</i>
How the drawer is discharged	<i>ib.</i>
Drawer must have notice before action brought	<i>ib.</i>
If the drawer of a bill be an infant, he is not liable	<i>ib.</i>
What amounts to an acceptance	<i>ib.</i>
A small matter amounts to an acceptance	<i>ib.</i>
Acceptance by one partner binds both, unless accepted distinctly from the partnership	93, 94
Acceptance may be qualified	<i>ib.</i>
There may be a partial acceptance of a foreign bill	<i>ib.</i>
What acceptance amounts to a general promise	110
What	

What amounts to an acceptance	<i>ib.</i>
Acceptance may be by parol	<i>ib.</i>
What acceptance good	111
Acceptor may plead statute against gaming	<i>ib.</i>
Acceptance after bill payable	<i>ib.</i>
Custom of acceptance laid too general	<i>ib.</i>
Acceptance for the honour of the drawer	112
A man cannot be sued on his acceptance of a bill of exchange abroad, after he has been discharged by the laws of that country	113
Acceptor cannot set up forgery of the bill	114
Action lies against a servant upon a bill drawn on him, and accepted generally, though the order is to place it to the account of the master	<i>ib.</i>
What acceptance of a bill of exchange is good	116
Acceptance to pay at a goldsmith's must be tendered within the same time that a note must	117
Acceptor being an infant, not liable	<i>ib.</i>
An acceptance by letter good	118
Book-keeper, servant, &c. may accept a bill of exchange	119
Acceptance after the day of payment is usual and good	<i>ib.</i>
Persons convicted of forging the acceptance of bills of exchange shall suffer death	119, 120
Where there are several indorsors and indorsees	<i>ib.</i>
Recovery by indorsee against the drawer without satisfaction, a bar to an action by him against a mesne indorser	<i>ib.</i>
All indorsors liable to last indorsee	121
If indorsed two bills in satisfaction of a debt, and before receipt the drawer broke; whether indorser could be charged	<i>ib.</i>
Assignment of a bill not payable to order, charges the indorser, not the drawer	<i>ib.</i>
Blank indorsement	122
Indorser liable, though bill forged	<i>ib.</i>
Indorsement may be by parol	<i>ib.</i>
What proof of an indorsement is sufficient	<i>ib.</i>
Indorser of a foreign bill of exchange may be charged without resorting to the drawer; <i>contra</i> , as to promissory notes	<i>ib.</i>
Indorsee of part of a bill must shew the other part satisfied before he can bring an action	124
Indorsee must demand the money of the drawee	<i>ib.</i>
Demand must be subsequent to the indorsement	<i>ib.</i>
Indorsee of an inland bill of exchange, in an action against the indorser, need not prove a demand of the money from the drawer	<i>ib.</i>
Indorsee may bring an action on bill payable to J. S. or order	128
Indorsement, what it is, [and how to be made]	<i>ib.</i>
It need not be shewn that it was subscribed	<i>ib.</i>
Indorser may bring an action, notwithstanding his indorsement	<i>ib.</i>
Bill payable to order	129

- Bill payable to bearer, or order, their difference as to indorsements *ib.*
 Indorsement in nature of a new bill *ib.*
 Custom as to bills payable to bearer 130
 Bill purchased at discount *ib.*
 Order of indorsee may sue on a general indorsement to him only *ib.*
 Feme covert cannot indorse a bill of exchange; executors or administrators may *ib.*
 What averment necessary in a declaration of an indorsement *ib.*
 Forging indorsement of bill of exchange, death 131
 Any person is intitled to receive the money on a bill payable to bearer *ib.*
 Assignee of such a bill must not sue in his own name 132
 Bill payable to bearer, where the receipt of it shall be tantamount to the receipt of the money *ib.*
 Bill payable to bearer like ready money 133
 Bill payable ten days after sight, the day of sight excluded *ib.*
 When foreign bills payable 134
 Three days of grace allowable *ib.*
 And upon inland as well as foreign bills *ib.*
 An *assumpsit* but debt lies not on a bill of exchange 135
Indebitatus assumpsit does not lie on a bill of exchange *ib.*
Indebitatus assumpsit lies not against acceptor, but it does against the drawer *ib.*
 Declaration on a bill of exchange without setting forth the custom *ib.*
 Action against a joint trader, who subscribed a bill for himself and partner 135, 136
 Custom of merchants necessary in declaration on bills of exchange 137
 Bill not indorsable in part, without satisfaction acknowledged for the rest 140
 Promise to pay bill already due, *secundum tenorem*, is a general promise 141
 Declaration on a bill of exchange is good without an express promise 142
 It need not alledge an actual promise on acceptance of a bill of exchange 144
 What declaration upon a bill of exchange is good 145
 Venue cannot be changed 147
 Acceptance of a bill must be proved to be in testator's life-time on an action brought by an executor *ib.*
 Acceptor not to be admitted to prove forgery of a bill *ib.*
 When a bill cannot be given in evidence of payment 148
 Notice from indorsee to acceptor must be personal; letter by the post is not sufficient proof *ib.*
 In trover for a bill of exchange, the person who carried it to the defendant indorsed blank, was held a good witness *ib.*
 Indorser must prove payment of bill 149
 Indorsee need not prove the drawer's hand *ib.*
 Nor

I N D E X.

v

Nor a demand on him	<i>ib.</i>
Drawer no witness to prove the bill not drawn by him, unless released	<i>ib.</i>
Interest payable from demand	150
Or from the protest	<i>ib.</i>
Drawer not liable to interest, damages, or costs, unless acceptance thereof be in writing	<i>ib.</i>
Interest on a bill not to be allowed without a protest	151
Interest given from the time of acceptance	<i>ib.</i>
When court will grant an injunction on a bill of exchange	<i>ib.</i>
When it will not	<i>ib.</i>
When a bill of exchange is deemed payment	153
Where bill no payment	<i>ib.</i>
Indorsee of a lost bill may oblige the drawee to pay the money upon indemnifying him	<i>ib.</i>
Bill lost or miscarried, drawer to give another	154
Forging bills of exchange death	<i>ib.</i>
Stealing bills of exchange death	<i>ib.</i>



Promissory Notes.

Of their origin and form	156
Promissory notes at common law	<i>ib.</i>
Within what time an action must be brought	159
In setting forth a note, the day is material	<i>ib.</i>
<i>Fecit notam, quam promisit solvere</i> imports a signing	<i>ib.</i>
Debt lies not on a promissory note	<i>ib.</i>
A joint or several note, how to be declared on	160
Note alledged to be written by the defendant, need not be said to be signed by him	161
Note payable to J. S. or order, is not a bill of exchange	<i>ib.</i>
What declaration upon a note is good	164
Note not to be avoided by a subsequent accident	165
Plaintiff not obliged on motion to produce a note	<i>ib.</i>
Indorsement in blank of a note, struck out at <i>nisi prius</i>	<i>ib.</i>
The words, <i>Pay the contents</i> , &c. may be put over the name indorsed in court	<i>ib.</i>
May be indorsed by administratrix	168
Indorsement by <i>feme covert</i> void	<i>ib.</i>
<i>Feme covert's</i> notes indorsable by husband only	<i>ib.</i>
To forge an indorsement of a promissory note, death	169
The innocent indorsee of a gaming note can maintain no action against the drawer	<i>ib.</i>
Indorsee may maintain trover for a note lost	171
Non-suited for his neglect in not demanding it of the drawer	<i>ib.</i>
Where	

- Where a man has owned his hand to an indorsement, he shall not
set up a defence of forgery by similitude 172
- Whether indorsee giving drawer time discharges the indorfor *ib.*
- The charge against the indorfor may be laid *secundum tenorem* of
the indorsement; against the drawer, *secundum tenorem billæ* 173
- Where part of a note is received of the drawer, the indorfor is not
liable to be resorted to for the rest 174
- There must be a demand on the drawer of a note before the in-
dorfor can be charged *ib.*
- If indorfor pays part of a note, demand on the drawer is not ne-
cessary *ib.*
- Whether a demand was made on the drawer, is a fact to be left
to the jury 175
- In an action against the drawer of a note, plaintiff need not al-
ledge notice of the indorsement to the defendant *ib.*
- Indorsee of administrator may declare without profert of letters of
administration 176
- Venue cannot be changed in an action on a promissory note 177
- Evidence admitted that might have been produced before at law 178
- Parol proof to explain the intent of a note *ib.*
- Indorfor's acknowledging his hand, not sufficient evidence against
the drawer 179
- After judgment by default, note set out in declaration need not
be proved *ib.*
- Indorsement on executing a writ of injury must be produced and
proved; pleading it is not a sufficient admission thereof *ib.*
- Subscribing witness to a note must be produced *ib.*
- Comparison of hands is sufficient evidence 180
- How far an injunction is proper to be granted to stay the pro-
ceedings in an action on a note *ib.*
- How far there must be a very strong equity appearing to intitle
plaintiff to an injunction in case of a note 181
- How far it will be an ingredient for continuing an injunction till
the hearing, that the note in question is a stale one 182
- To steal notes, death 183
- Of notes lost *ib.*
- When deemed payment 184
- When a note is a good discharge of a debt *ib.*
- How far the court will order a note to be delivered up 185
- Note given upon a South-Sea contract is a composition within
7 Geo. cap. 31. as well as a bond. 186
- Note given by a bankrupt, payable at a future day, is not dis-
charged by his certificate 187
- Interlocutory judgment does not emerge notes *ib.*
- Taking out execution against drawer and indorfor both, is a con-
tempt 188
- Whether a note given to a *feme covert* for money in her hus-
band's life-time, be assets of the husband *ib.*

Bank,

Bank, Cash, and Goldsmiths Notes.

During the continuance of the Bank, no other company exceeding six, to borrow money on bills payable at less than six months	190
Forging Bank bills or notes, &c. death	<i>ib.</i>
Trover for a Bank bill will lie against a person finding it, but not against his assignee	191
No difference between Goldsmiths notes and bills of exchange	<i>ib.</i>
Of Evidence	<i>ib.</i>
Party receiving a goldsmith's note, and tendering it the next day, according to usage, does not bear the loss	<i>ib.</i>
Goldsmiths notes left and cancelled, in order to receive the money, and renewed notes taken upon a stop, does not throw the loss upon the taker of the notes	192
Within what time a goldsmith's note must be demanded	<i>ib.</i>
Bearer of a goldsmith's note cannot maintain an action	194
But if it be payable to order, the indorsee may bring an action	<i>ib.</i>
Indorsement binds the indorser	195
When a goldsmith's note shall be deemed payment	196
Stealing goldsmiths notes, death	<i>ib.</i>
Equity	<i>ib.</i>

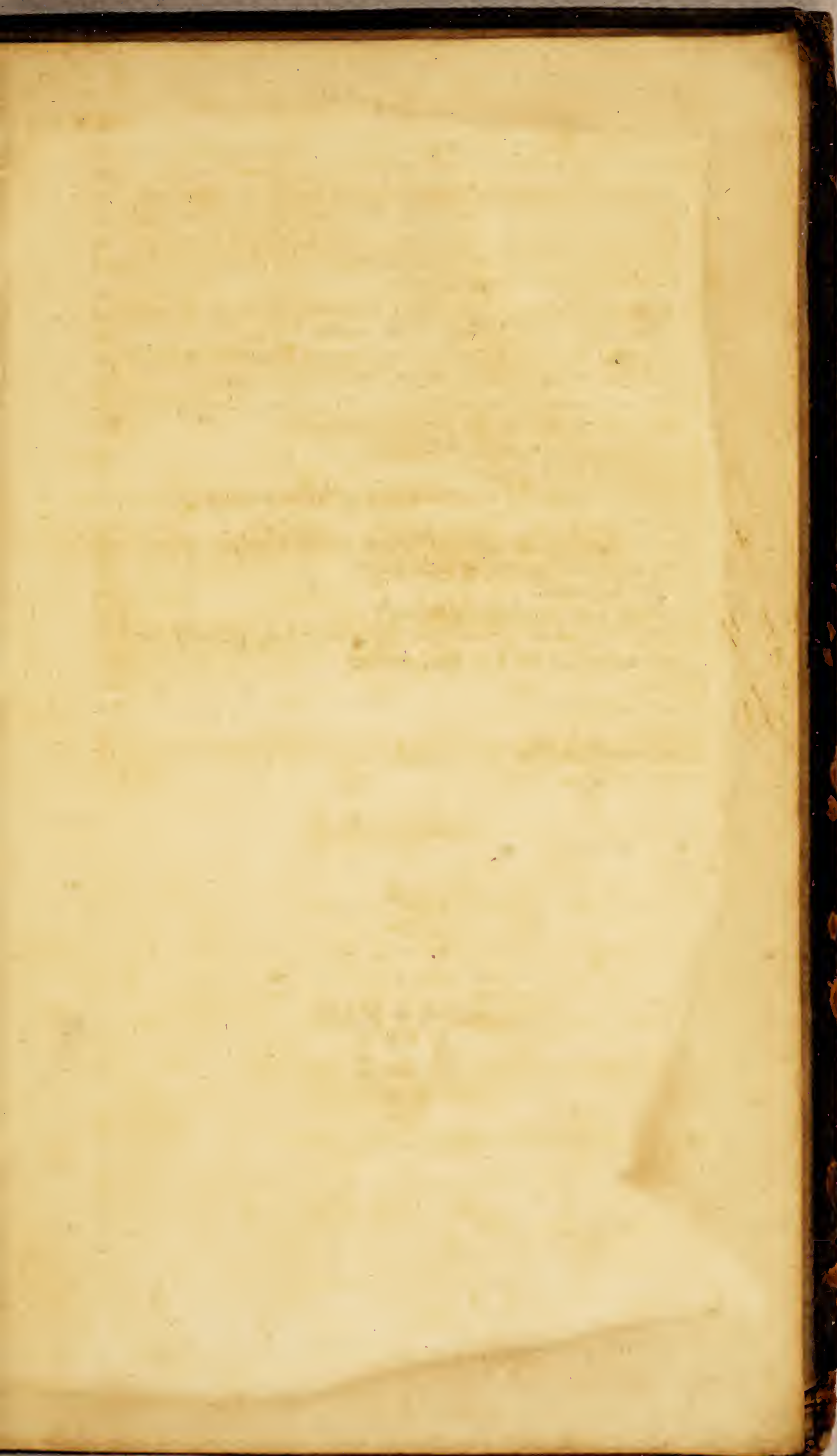


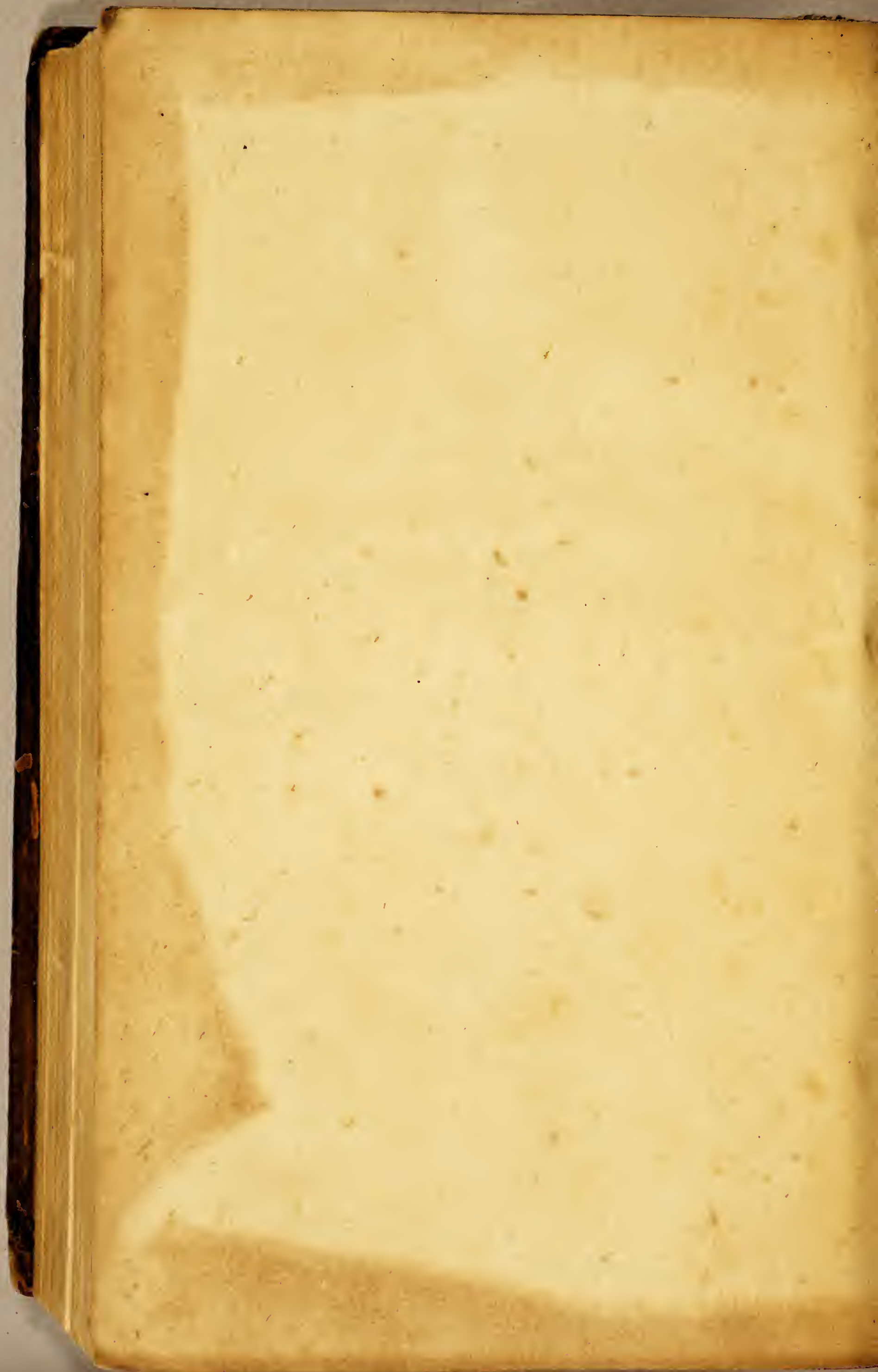
Insurances.

The nature of them	198
Goods lost after the owner has taken them from the ship into a lighter, is no charge on the insurer	200
Insurer is liable where the ship goes back to perform quarantine	<i>ib.</i>
A ship never heard of is presumed to be foundered at sea	<i>ib.</i>
When assurance is interest or no interest, the plaintiff has no occa- sion to prove his interest, for the defendant cannot controvert it	201
On a policy, interest or no interest, a recapture, after being in an enemy's port, will not avail the insurer	<i>ib.</i>
Same upon a ransom	<i>ib.</i>
The owner, and not the freighter, is liable for a loss of gold sent by the ship	201, 202
Baratry, what	<i>ib.</i>
Signification of the word Baratry in a policy	<i>ib.</i>
Where a master deviates for the benefit of his owners, it is not baratry, though it may be a breach of contract	202, 203
When owner of a ship can be guilty of baratry	<i>ib.</i>
Deviation	

Deviation or not, must be construed according to usage	<i>ib.</i>
An intention to deviate does not discharge the underwriter	<i>ib.</i>
If the mariners force the master to return, it is no deviation	<i>ib.</i>
If after a policy of insurance a damage happens, and afterwards, in the same voyage, a deviation, yet the assured shall recover for what happened before the deviation, for the policy is discharged from the time of deviation only	203, 204.
In policies, warranted to depart with convoy, shall be intended without the wilful default of the master	<i>ib.</i>
A ship that fails with the convoy, though hindered by the weather from taking sailing orders, departs with convoy	<i>ib.</i>
A ship warranted to depart with convoy is insured during her voyage, and her way to the general rendezvous	<i>ib.</i>
A policy avoided by a skirmish at sea	<i>ib.</i>
Meaning of word <i>Depart</i>	<i>ib.</i>
What concealment of circumstances, or misinformation, &c. avoids a policy	205
Concealing an information of danger avoids a policy, though the loss does not happen by such danger	<i>ib.</i>
Policies in general	214
Bottomry and <i>Respondentia</i> Bonds	279
If a ship deviates in her voyage, and is after lost, plaintiff who had lent money on her hull shall recover	282
Actions	288
Injunction	298
Equity	300
Insurances from Fire	311
Insurances upon Lives	313







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